35A-4-101. Title.

This chapter is known as the "Employment Security Act."

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-102. Public policy -- General welfare requires creation of unemployment reserves -- Employment offices.

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern that requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nation-wide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of unemployment. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state, for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of unemployed persons.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-103. Void agreements -- Child support obligations -- Penalties.

(1) (a) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter is void.

(b) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from the employer, is void.

(c) An employer may not directly or indirectly:

(i) make, require, or accept any deduction from wages to finance the employer's contributions required from the employer;

(ii) require or accept any waiver of any right under this chapter by any individual in the employer's employ;

(iii) discriminate in regard to the hiring or tenure of work on any term or condition of work of any individual on account of the individual claiming benefits under this chapter; or

(iv) in any manner obstruct or impede the filing of claims for benefits.

(d) (i) Any employer or officer or agent of an employer who violates Subsection (1)(c) is, for each offense, guilty of a class B misdemeanor.

(ii) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under this

Subsection (1) shall be not less than $100, and a penalty of imprisonment shall be not more than six months.

(2) An individual claiming benefits may not be charged fees or costs of any kind in any proceeding under this chapter by the department or its representatives, or by any court or any officer of the court.

(3) (a) Any individual claiming benefits in any proceeding before the department or its representatives or a court may be represented by counsel or any other authorized agent.

(b) A counsel or agent may not either charge or receive for the counsel's or agent's services more than an amount approved by the division or administrative law judge in accordance with rules made by the department.

(4) Except as provided for in Subsection (5):

(a) any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void;

(b) rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt;

(c) benefits received by any individual, so long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except debts incurred for necessaries furnished to the individual or the individual's spouse or dependents during the time when the individual was unemployed; and

(d) any waiver of any exemption provided for in Subsection (4) is void.

(5) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes:

(i) child support obligations; or

(ii) an uncollected overissuance of SNAP benefits.

(b) If the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support agency charged with enforcing that obligation that the individual is eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(i) any amount required to be deducted and withheld from unemployment compensation under legal process, as defined in the Social Security Act, 42 U.S.C. Sec. 659(i), properly served upon the department;

(ii) the amount determined under an agreement submitted to the division under Subsection 454 (19)(B)(i) of the Social Security Act, 42 U.S.C. Sec. 654, by the state or local child support enforcement agency, except if Subsection (5)(c)(i) is applicable; or

(iii) the amount specified by the claimant to the division if neither Subsection (5)(c)(i) nor (ii) is applicable.

(d) The division shall notify the state SNAP agency that an individual is eligible for unemployment compensation if the individual:

(i) owes an uncollected overissuance of SNAP benefits; and

(ii) is determined to be eligible for unemployment compensation.

(e) The division shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance of SNAP benefits:

(i) the amount specified by the individual to the division to be deducted and withheld under this Subsection (5)(e);

(ii) the amount, if any, determined pursuant to an agreement submitted to the state SNAP agency under Section 13(c)(3)(B) of the Food and Nutrition Act of 2008; or

(iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to Section 13(c)(3)(B) of the Food and Nutrition Act of 2008.

(f) Any amount deducted and withheld under Subsection (5)(c) or (e) shall:

(i) be paid by the department to the appropriate:

(A) state or local child support enforcement agency; or

(B) state SNAP agency; and

(ii) for all purposes, be treated as if it was paid to the individual as unemployment compensation and then paid by the individual to the appropriate:

(A) state or local child support enforcement agency in satisfaction of the individual's child support obligation; or

(B) state SNAP agency in satisfaction of the individual's uncollected overissuance.

(g) For purposes of this Subsection (5):

(i) "Child support obligation" means obligations that are enforced under a plan described in Section 454 of the Social Security Act, 42 U.S.C. Sec. 654, that has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.

(ii) "State SNAP agency" means the Department of Workforce Services or its designee responsible for the collection of uncollected overissuances.

(iii) "State or local child support enforcement agency" means any agency or political subdivision of the state operating under a plan described in this Subsection (5).

(iv) "Uncollected overissuance" is as defined in Section 13(c)(1) of the Food and Nutrition Act of 2008.

(v) "Unemployment compensation" means any compensation payable under this chapter, including amounts payable under an agreement directed by federal law that provides compensation assistance or allowances for unemployment.

(h) This Subsection (5) is applicable only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency or state SNAP agency for the administrative costs of the department under this Subsection (5) that are directly related to the enforcement of child support obligations or the repayment of uncollected overissuance of SNAP benefits.

Amended by Chapter 41, 2012 General Session

35A-4-105. Department may be represented by attorneys in actions.

(1) In any civil action to enforce the provisions of this chapter the department may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose, or at the department's request by the attorney general, or if the action is brought in the courts of any other state by any attorney qualified to appear in the courts of that state.

(2) All criminal actions for violation of any provision of this chapter, or of any

rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of any county in which the employing unit has a place of business or the violator resides.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-106. Reciprocal arrangements with other jurisdictions.

(1) The division is authorized to enter into reciprocal arrangements with appropriate and authorized agencies of other states or of the federal government, or both, in accordance with Subsections (1)(a) through (d):

(a) Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be considered to be services performed entirely within any one of the states:

(i) in which any part of the individual's service is performed;

(ii) in which the individual has the individual's residence; or

(iii) in which the employing unit maintains a place of business, if there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by the individual for the employing unit are considered to be performed entirely within the state.

(b) The division shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter with the individual's wages and employment covered under the unemployment compensation laws of other states that:

(i) are approved by the Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations; and

(ii) include provisions for:

(A) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws; and

(B) avoiding the duplicate use of wages and employment by reason of such combining.

(c) (i) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be considered to be wages for insured work for the purpose of determining the individual's rights to benefits under this chapter.

(ii) Wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be considered to be wages or services on the basis of which unemployment compensation under the law of another state or of the federal government is payable.

(iii) An arrangement may not be entered into unless it contains provisions for reimbursements:

(A) to the fund for the benefits paid under this chapter upon the basis of such wages or services; and

(B) from the fund for such of the compensation paid under the other law upon the basis of wages for insured work, as the director of the division finds will be fair and reasonable as to all affected interests.

(d) (i) Contributions due under this chapter with respect to wages for insured work shall, for the purposes of Section 35A-4-305, be considered to have been paid to the fund as of the date payment was made as contributions therefor under another state or Federal Unemployment Compensation Law.

(ii) An arrangement may not be entered into unless it contains provisions for the reimbursement to the fund of the contributions and the actual earnings thereon as the director of the division finds will be fair and reasonable as to all affected interests.

(2) (a) Reimbursement paid from the fund pursuant to Subsection (1)(c) shall be considered to be benefits for the purpose of Sections 35A-4-401 and 35A-4-501.

(b) The division is authorized to make to other state or federal agencies and to receive from other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to Subsection (1).

(3) (a) The administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and the other states and the appropriate federal agencies in exchanging services, and making available facilities and information.

(b) The division is authorized to make investigations, secure and transmit information, make available services and facilities, and exercise other powers provided in this chapter with respect to the administration of this chapter as it considers necessary or appropriate to facilitate the administration of any unemployment compensation or public employment service law, and in like manner, to accept and use information, services and facilities made available to this state by the agency charged with the administration of any other unemployment compensation or public employment service law.

(4) To the extent permissible under the laws and Constitution of the United States, the director of the division is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under this chapter or under a similar law of the foreign government.

Amended by Chapter 375, 1997 General Session

35A-4-107. Limit of liability -- State -- Department.

(1) Benefits shall be considered to be due and payable under this chapter only to the extent provided in this chapter and to the extent that money is available to the credit of the Unemployment Compensation Fund.

(2) The state, the department, or any division of the department may not be held liable for any amount that exceeds the money available in the Unemployment Compensation Fund.

Amended by Chapter 342, 2011 General Session

35A-4-108. Legislature may amend or repeal -- No vested private right.

(1) The Legislature reserves the right to amend or repeal all or any part of this chapter at any time.

(2) There shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant to this chapter shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-201. General definitions.

As used in this chapter:

(1) (a) Except as otherwise provided in Subsection (1)(b), "base period" means the first four of the last five completed calendar quarters next preceding the first day of the individual's benefit year with respect to any individual whose benefit year commences on or after January 5, 1986.

(b) (i) For a claimant whose benefit year is effective on or after January 2, 2011, and who does not have sufficient wages in the first four of the last five completed calendar quarters to otherwise qualify for benefits under Subsection (1)(a), the base period is the last four completed calendar quarters.

(ii) Wages used to establish eligibility regardless of how the base period is calculated are not available for qualifying benefits in any subsequent benefit year.

(2) "Benefit year" means the 52 consecutive week period beginning with the first week with respect to which an individual files for benefits and is found to have an insured status.

(3) "Benefits" means the money payments payable to an individual as provided in this chapter with respect to the individual's unemployment.

(4) "Calendar quarter" means the period of three consecutive months ending on March 31, June 30, September 30, or December 31, or the equivalent, as the department may by rule prescribe.

(5) "Contribution" means the money payments required by this chapter to be made into the Unemployment Compensation Fund by any employing unit on account of having individuals in its employ.

(6) "Division" means the Unemployment Insurance Division.

(7) "Employment office" means a free public employment office or branch operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(8) "Extended benefits" has the meaning specified in Subsection 35A-4-402(7)(f).

(9) "Fund" means the Unemployment Compensation Fund established by this chapter.

(10) "Insured average annual wage" means on or before the 15th day of May of each year, the total wages of insured workers for the preceding calendar year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding calendar year as determined under the rules of

the department calculated to two decimal places, disregarding any fraction of one cent.

(11) "Insured average fiscal year wage" means on or before the 15th day of November of each year, the total wages of insured workers for the preceding fiscal year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding fiscal year as determined under the rules of the department calculated to two decimal places, disregarding any fraction of one cent.

(12) "Insured average fiscal year weekly wage" means the insured average fiscal year wage determined in Subsection (11), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.

(13) "Insured average weekly wage" means the insured average annual wage determined in Subsection (10), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.

(14) "Insured status" means that an individual has, during the individual's base-period, performed services and earned wages in employment sufficient to qualify for benefits under Section 35A-4-403.

(15) "Insured work" means employment for an employer, as defined in Section 35A-4-203.

(16) "Monetary base period wage requirement" means 8% of the insured average fiscal year wage for the preceding fiscal year, for example, fiscal year 1990 for individuals establishing benefit years in 1991, rounded up to the next higher multiple of $100.

(17) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.

(18) "Tribal unit" means a subdivision, subsidiary, or business enterprise wholly owned by an American Indian tribe.

(19) "Week" means the period or periods of seven consecutive calendar days as the department may prescribe by rule.

Amended by Chapter 277, 2010 General Session
Amended by Chapter 278, 2010 General Session
Amended by Chapter 282, 2010 General Session

35A-4-202. Employing units.

As used in this chapter:

(1) (a) "Employing unit" means:

(i) any individual or type of organization that has or subsequent to January 1, 1935, had one or more individuals performing services for it within the state including any:

(A) partnership;
(B) association;
(C) trust;
(D) estate;
(E) joint stock company;
(F) insurance company;
(G) limited liability company;

(H) limited liability partnership;

(I) joint venture;

(J) corporation, whether domestic or foreign;

(K) the receiver, trustee in bankruptcy, trustee or successor of any entity listed in Subsections (1)(a)(i)(A) through (J);

(L) the legal representative of a deceased person; or

(M) a tribal unit; or

(ii) any properly and legally registered professional employer organization as defined by Section 31A-40-102.

(b) The department may adopt rules specific to a professional employer organization pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be performing services for a single employing unit for all the purposes of this chapter.

(d) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit is considered to be engaged by the employing unit for all the purposes of this chapter whether the individual was hired or paid directly by the employing unit or by the person, provided the employing unit had actual or constructive knowledge of the work.

(2) "Hospital" means an institution that is licensed, certified, or approved by the Department of Health as a hospital.

(3) "Institution of higher education," for the purposes of this section, means an educational institution that:

(a) (i) admits, as regular students only, individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides:

(A) an educational program for which it awards a bachelor's or higher degree;

(B) a program that is acceptable for full credit toward a bachelor's or higher degree;

(C) a program of postgraduate or postdoctoral studies; or

(D) a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All colleges and universities in this state are institutions of higher education for purposes of this section.

Amended by Chapter 318, 2008 General Session
Amended by Chapter 382, 2008 General Session

35A-4-203. Definition of employer.

As used in this chapter "employer" means:

(1) an individual or employing unit which employs one or more individuals for some portion of a day during a calendar year, or that, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax

Act, is required, under the act, to be an employer;

(2) an employing unit that, having become an employer under Subsection (1), has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this chapter; or

(3) for the effective period of its election under Subsection 35A-4-310(3), an employing unit that has elected to become fully subject to this chapter.

Amended by Chapter 17, 2003 General Session

35A-4-204. Definition of employment.

(1) Subject to the other provisions of this section, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.

(2) "Employment" includes an individual's entire service performed within or both within and without this state if one of Subsections (2)(a) through (k) is satisfied.

(a) The service is localized in this state. Service is localized within this state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(b) (i) The service is not localized in any state but some of the service is performed in this state and the individual's base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is in this state; or

(ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) (i) (A) The service is performed entirely outside this state and is not localized in any state;

(B) the worker is one of a class of employees who are required to travel outside this state in performance of their duties; and

(C) (I) the base of operations is in this state; or

(II) if there is no base of operations, the place from which the service is directed or controlled is in this state.

(ii) Services covered by an election under Subsection 35A-4-310(3), and services covered by an arrangement under Section 35A-4-106 between the division and the agency charged with the administration of any other state or federal unemployment compensation law, under which all services performed by an individual for an employing unit are considered to be performed entirely within this state, are considered to be employment if the division has approved an election of the employing unit for whom the services are performed, under which the entire service of the individual during the period covered by the election is considered to be insured work.

(d) (i) The service is performed in the employ of the state, a county, city, town, school district, or other political subdivision of the state, or in the employ of an Indian tribe or tribal unit or an instrumentality of any one or more of the foregoing which is wholly owned by the state or one of its political subdivisions or Indian tribes or tribal

units if:

(A) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7);

(B) the service is not excluded from employment by Section 35A-4-205; and

(C) as to any county, city, town, school district, or political subdivision of this state, or an instrumentality of the same or Indian tribes or tribal units, that service is either:

(I) required to be treated as covered employment as a condition of eligibility of employers in this state for Federal Unemployment Tax Act employer tax credit;

(II) required to be treated as covered employment by any other requirement of the Federal Unemployment Tax Act, as amended; or

(III) not required to be treated as covered employment by any requirement of the Federal Unemployment Tax Act, but coverage of the service is elected by a majority of the members of the governing body of the political subdivision or instrumentality or tribal unit in accordance with Section 35A-4-310.

(ii) Benefits paid on the basis of service performed in the employ of this state shall be financed by payments to the division instead of contributions in the manner and amounts prescribed by Subsections 35A-4-311(2)(a) and (4).

(iii) Benefits paid on the basis of service performed in the employ of any other governmental entity or tribal unit described in this Subsection (2) shall be financed by payments to the division in the manner and amount prescribed by the applicable provisions of Section 35A-4-311.

(e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:

(i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306(c)(8) of that act; and

(ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(f) (i) The service is performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of this Subsection (2) or the parallel provisions of another state's law if:

(A) the employer's principal place of business in the United States is located in this state;

(B) the employer has no place of business in the United States but is:

(I) an individual who is a resident of this state;

(II) a corporation that is organized under the laws of this state; or

(III) a partnership or trust in which the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria of Subsections (2)(f)(i)(A) and (B) is met but:

(I) the employer has elected coverage in this state; or

(II) the employer fails to elect coverage in any state and the individual has filed a

claim for benefits based on that service under the law of this state.

(ii) "American employer" for purposes of this Subsection (2) means a person who is:

(A) an individual who is a resident of the United States;

(B) a partnership if 2/3 or more of the partners are residents of the United States;

(C) a trust if all of the trustees are residents of the United States;

(D) a corporation organized under the laws of the United States or of any state;

(E) a limited liability company organized under the laws of the United States or of a state;

(F) a limited liability partnership organized under the laws of the United States or of any state; or

(G) a joint venture if 2/3 or more of the members are individuals, partnerships, corporations, limited liability companies, or limited liability partnerships that qualify as American employers.

(g) The service is performed:

(i) by an officer or member of the crew of an American vessel on or in connection with the vessel; and

(ii) the operating office from which the operations of the vessel, operating on navigable waters within, or within and without, the United States, is ordinarily and regularly supervised, managed, directed, and controlled within this state.

(h) A tax with respect to the service in this state is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or that, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this chapter.

(i) (i) Notwithstanding Subsection 35A-4-205(1)(p), the service is performed:

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for the driver's principal; or

(B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and the transmission to the salesman's principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(ii) The term "employment" as used in this Subsection (2) includes services described in Subsection (2)(i)(i) performed only if:

(A) the contract of service contemplates that substantially all of the services are to be performed personally by the individual;

(B) the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation; and

(C) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(j) The service is performed by an individual in agricultural labor as defined in

Section 35A-4-206.

(k) The service is domestic service performed in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more during any calendar quarter in either the current calendar year or the preceding calendar year to individuals employed in the domestic service.

(3) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the division that:

(a) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of hire for services; and

(b) the individual has been and will continue to be free from control or direction over the means of performance of those services, both under the individual's contract of hire and in fact.

(4) If an employer, consistent with a prior declaratory ruling or other formal determination by the division, has treated an individual as independently established and it is later determined that the individual is in fact an employee, the department may by rule provide for waiver of the employer's retroactive liability for contributions with respect to wages paid to the individual prior to the date of the division's later determination, except to the extent the individual has filed a claim for benefits.

Amended by Chapter 22, 2006 General Session

35A-4-205. Exempt employment.

(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:

(a) service performed in the employ of the United States Government or an instrumentality of the United States immune under the United States Constitution from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304, the payments required of the instrumentalities with respect to that year shall be refunded by the division from the fund in the same manner and within the same period as is provided in Subsection 35A-4-306(5) with respect to contributions erroneously collected;

(b) service performed by an individual as an employee or employee representative as defined in Section 1 of the Railroad Unemployment Insurance Act, 45 U.S.C., Sec. 351;

(c) agricultural labor as defined in Section 35A-4-206;

(d) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);

(e) (i) service performed in the employ of a school, college, or university, if the service is performed:

(A) by a student who is enrolled and is regularly attending classes at that school, college, or university; or

(B) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform that service, that the employment of that spouse to perform that service is provided under a program to provide financial assistance to the student by the school, college, or university, and that the employment will not be covered by any program of unemployment insurance;

(ii) service performed by an individual who is enrolled at a nonprofit or public educational institution, that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at the institution, that combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, but this Subsection (1) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(iii) service performed in the employ of a hospital, if the service is performed by a patient of the hospital; or

(iv) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved under state law;

(f) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's parent;

(g) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

(i) in the employ of:

(A) a church or convention or association of churches; or

(B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) in the employ of a governmental entity or Indian tribe referred to in Subsection 35A-4-204(2)(d) if the service is performed by an individual in the exercise of the individual's duties:

(A) as an elected official;

(B) as a member of a legislative body or the judiciary;

(C) as a member of the National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in an advisory position or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week; or

(F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000;

(iv) in a facility conducted for the purpose of carrying out a program of

rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, injury, or providing a remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving that rehabilitation or remunerative work;

(v) as part of an unemployment work-relief or work-training program, assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision of the state or of an Indian tribe, by an individual receiving the work-relief or work-training; and

(vi) by an inmate of a custodial or penal institution;

(h) casual labor not in the course of the employing unit's trade or business;

(i) service performed in any calendar quarter in the employ of any organization exempt from income tax under Subsection 501(a), Internal Revenue Code, other than an organization described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for the service is less than $50;

(j) service performed in the employ of a foreign government, including service as a consular or other officer, other employee, or a nondiplomatic representative;

(k) service performed in the employ of an instrumentality wholly owned by a foreign government:

(i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(ii) if the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality exemption is claimed grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;

(l) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all the service performed by the individual for that person is performed for remuneration solely by way of commission;

(m) service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(n) service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are considered to be performed entirely within the agency's state or under the federal law;

(o) service performed by lessees engaged in metal mining under lease agreements, unless the individual lease agreement, or the practice in actual operation under the agreement, is such as would constitute the lessees' employees of the lessor at common law; and

(p) services as an outside salesman paid solely by way of commission if the services were performed outside of all places of business of the enterprises for which the services are performed except:

(i) as provided in Subsection 35A-4-204(2)(i); or

(ii) if the services would constitute employment at common law.

(2) (a) "Included and excluded service" means if the services performed during 1/2 or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period are considered to be employment.

(b) If the services performed during more than 1/2 of any pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period are considered to be employment.

(c) As used in this Subsection (2), "pay period" means a period of not more than 31 consecutive days for which payment of remuneration is ordinarily made to the individual by the person employing the individual.

(3) The following services are exempt employment under the Utah Employment Security Act:

(a) service performed by an individual as a licensed real estate agent or salesman, if all the service performed by the individual is performed for remuneration solely by way of commission;

(b) service performed by an individual as a licensed securities agent or salesman or a registered representative, if all the service performed by the individual is performed for remuneration solely by way of commission;

(c) service performed by an individual as a telephone survey conductor or pollster if:

(i) the individual does not perform the service on the principal's premises; and

(ii) the individual is paid for the service solely on a piece-rate or commission basis; and

(d) service performed by a nurse licensed or registered under Title 58, Chapter 31b, Nurse Practice Act, if:

(i) the service of the nurse is performed in the home of the patient;

(ii) substantially all of the nurse's compensation for the service is from health insurance proceeds; and

(iii) no compensation or fee for the service is paid to an agency or company as a business furnishing nursing services.

Amended by Chapter 22, 2006 General Session

35A-4-206. Agricultural labor.

(1) "Agricultural labor" means any remunerated service performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(c) in connection with:

(i) the production or harvesting of any commodity defined as an agricultural commodity in Subsection 15(g) of the Federal Agricultural Marketing Act, as amended, 46 Stat. 1550, Sec. 3; 12 U.S.C. 1141j;

(ii) the ginning of cotton; or

(iii) the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used primarily for supplying and storing water for farming purposes;

(d) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than 1/2 of the commodity with respect to which the service is performed; or

(e) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in Subsection (1)(d), but only if the operators produced more than 1/2 of the commodity with respect to which the service is performed.

(2) (a) Subsections (1)(d) and (e) are not applicable with respect to service:

(i) performed in connection with commercial canning or commercial freezing;

(ii) in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(iii) on a farm operated for profit if the service is not in the course of the employer's trade or business.

(b) As used in Subsection (1), "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(3) (a) Services performed by an individual in agricultural labor are considered employment when the service is performed for a person who:

(i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor; or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(b) For the purposes of this Subsection (3), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person is treated as an employee of the crew leader:

(i) if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act;

(ii) if substantially all the members of the crew operate or maintain tractors, mechanized harvesting, or crop dusting equipment, or any other mechanized equipment, that is provided by the crew leader; and

(iii) if the individual is not an employee of the other person within the meaning of Section 35A-4-204.

(c) For the purposes of this Subsection (3), in the case of any individual who is

furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under Subsection (3)(b)(iii):

(i) the other person and not the crew leader is treated as the employer of the individual; and

(ii) the other person is treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on the individual's own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person.

(d) For the purposes of this Subsection (3), "crew leader" means an individual who:

(i) furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on the individual's own behalf or on behalf of the other person, the individuals so furnished by the individual's for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

Amended by Chapter 375, 1997 General Session

35A-4-207. Unemployment.

(1) (a) An individual is "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to the week are less than his weekly benefit amount.

(b) The department shall prescribe rules applicable to unemployed individuals making distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department considers necessary.

(2) The department may by rule prescribe in the case of individuals working on a regular attachment basis the existence of unemployment for periods longer than a week if:

(a) it is a period of less than full-time work;

(b) insofar as possible the loss of wages required as a condition of being considered unemployed in those periods shall be such as to allow comparable benefits, for comparable loss in wages, to those individuals working less than full-time in each week as would be payable on a weekly claim period basis to those individuals working full-time and not at all in alternate weeks.

(3) Unemployment shall in no case be measured on a basis of longer than a four-week period.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-208. Wages defined.

(1) As used in this chapter, "wages" means wages as currently defined by Section 3306(b), Internal Revenue Code of 1986, with modifications, subtractions, and

adjustments provided in Subsections (2), (3), and (4).

(2) For purposes of Section 35A-4-303, "wages" does not include that amount paid to an individual by an employer with respect to employment subject to this chapter that is in excess of 75% of the insured average fiscal year wage, rounded to the next higher multiple of $100, during the fiscal year prior to the calendar year of the payment to the individual by the individual's employer on or after January 1, 1988.

(3) For the purpose of determining whether the successor employer during the calendar year has paid remuneration to an individual with respect to employment equal to the applicable taxable wages as defined by this Subsection (3), any remuneration with respect to employment paid to the individual by a predecessor employer during the calendar year and prior to an acquisition is considered to have been paid by a successor employer if:

(a) the successor employer during any calendar year acquires the unemployment experience within the meaning of Subsection 35A-4-303(8) or 35A-4-304(3) of a predecessor employer; and

(b) immediately after the acquisition employs in the successor employer's trade or business an individual who immediately prior to the acquisition was employed in the trade or business of the predecessor.

(4) The remuneration paid to an individual by an employer with respect to employment in another state, upon which contributions were required of the employer under the unemployment compensation law of that state, shall be included as a part of the taxable wage base defined in this section.

(5) As used in this chapter, "wages" does not include:

(a) the amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for a payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer that makes provision for:

(i) (A) the employer's employees generally;

(B) the employer's employees generally and their dependents;

(C) a class or classes of the employer's employees; or

(D) a class or classes of the employer's employees and their dependents; and

(ii) on account of:

(A) sickness or accident disability, but, in the case of payments made to an employee or any of the employee's dependents, Subsection (5)(a)(i) excludes from wages only payments that are received under a workers' compensation law;

(B) medical or hospitalization expenses in connection with sickness or accident disability; or

(C) death;

(b) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for the employer;

(c) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under Section 3101, Internal Revenue Code, with respect to domestic services performed in a private home of the employer or for agricultural labor;

(d) any payment made to, or on behalf of, an employee or the employee's beneficiary:

(i) from or to a trust described in Section 401(a), Internal Revenue Code, that is exempt from tax under Section 501(a), Internal Revenue Code, at the time of the payment, except for a payment made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;

(ii) under or to an annuity plan that at the time of the payment is a plan described in Section 403(a), Internal Revenue Code;

(iii) under a simplified employee pension, as defined in Section 408(k)(l), Internal Revenue Code, other than any contributions described in Section 408(k)(6), Internal Revenue Code;

(iv) under or to an annuity contract described in Section 403(b), Internal Revenue Code, except for a payment for the purchase of the contract that is made by reason of a salary reduction agreement whether or not the agreement is evidenced by a written instrument;

(v) under or to an exempt governmental deferred compensation plan as defined in Section 3121(v)(3), Internal Revenue Code; or

(vi) to supplement pension benefits under a plan or trust described in Subsections (5)(d)(i) through (v) to take into account a portion or all of the increase in the cost of living, as determined by the Secretary of Labor, since retirement, but only if the supplemental payments are under a plan that is treated as a welfare plan under Section 3(2)(B)(ii) of the Employee Income Security Act of 1974; or

(e) any payment made to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan within the meaning of Section 125, Internal Revenue Code, if the payment would not be treated as wages under a cafeteria plan.

Amended by Chapter 12, 2005 General Session

35A-4-301. Definitions.

As used in this part:

(1) "Benefit cost rate" means benefit costs of all individuals paid in a calendar year, as defined in Subsection (2), including the state's share of extended benefit costs, divided by the total wages paid by all employers subject to contributions in the same calendar year, calculated to four decimal places, disregarding the remaining fraction, if any.

(2) "Benefit costs" means the net money payments made to individuals who were employed by employers subject to contributions, excluding extended benefit costs, as provided in this chapter with respect to unemployment.

(3) "Computation date" means July 1 of any year, beginning July 1, 1984.

(4) "Contribution year" means any calendar year beginning on January 1 and ending on December 31.

(5) "Fiscal year" means the year beginning with July 1 of one year and ending June 30 of the next year. For example, fiscal year 1992 begins July 1, 1991, and ends June 30, 1992.

(6) "New employer" means any employer who has been an employer as defined in this chapter and whose account has been chargeable with benefits for less than one

fiscal year immediately preceding the computation date.

(7) "Payroll" means total wages.

(8) "Qualified employer" means any employer who was an employer as defined in this chapter during each quarter of the prior fiscal year immediately preceding the computation date.

(9) "Qualifying period" means the four fiscal years immediately preceding the contribution year on or after January 1, 1985. If four fiscal years of data are not available, the qualifying period is the lesser number of fiscal years for which data are available, but not less than one fiscal year.

(10) "Reserve" means that amount of money in the fund which has been appropriated or is subject to appropriation by the Legislature, exclusive of money transferred to the fund under the Federal Employment Security Administrative Financing Act of 1954, 42 U.S.C. 1101 et seq.

(11) "Taxable wages" means all remuneration paid by an employer to employees for insured work that is subject to unemployment insurance contributions.

(12) "Total wages" means all remuneration paid by an employer to employees for insured work.

(13) "Unemployment experience" means all factors, including benefit costs and taxable wages, which bear a direct relation to an employer's unemployment risk.

Amended by Chapter 12, 2005 General Session

35A-4-302. Contributions.

(1) (a) Contributions accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter with respect to wages for employment. The contributions become due and shall be paid by each employer to the division for the fund in accordance with rules the department may prescribe.

(b) Contributions may not be deducted, in whole or in part, from the wages of individuals in the employer's employ.

(c) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to 1/2 cent or more, in which case it shall be increased to one cent.

(2) All contributions paid by an employer under this chapter are deductible in arriving at the taxable income of the employer under Title 59, Chapters 7 and 10, to the same extent as taxes are deductible during any taxable year by the employer.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-303. Determination of contribution rates.

(1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio and is determined by dividing the total benefit costs charged back to an employer during the immediately preceding four fiscal years by the total taxable wages of the employer for the same time period, calculated to four decimal places, disregarding any remaining fraction.

(b) In calculating the basic contribution rate under Subsection (1)(a), if four fiscal years of data are not available:

(i) the data of the number of complete fiscal years that is available shall be divided by the total taxable wages for the same time period; or

(ii) if the employer is a new employer, the basic contribution rate shall be determined as described in Subsection (5).

(2) (a) Subject to Subsection (2)(b), the division shall determine the social contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction, and rounding the result to three decimal places as follows:

(i) if the fourth decimal place is four or less, the third decimal place does not change; or

(ii) if the fourth decimal place is five or more, rounding the third decimal place up.

(b) For calendar years 2012 and 2013 only, if the calculation of the social contribution rate under Subsection (2)(a) is greater than 0.004, the social contribution rate for that calendar year is 0.004.

(3) (a) The division shall set the reserve factor at a rate that sustains an adequate reserve.

(b) For the purpose of setting the reserve factor:

(i) the adequate reserve is defined as between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(ii) the division shall set the reserve factor at 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;

(iii) the division shall set the reserve factor between 0.5000 and 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is greater than the adequate reserve;

(iv) the division shall set the reserve factor between 1.0000 and 1.5000 if the actual reserve fund balance as of June 30 prior to the computation date is less than the adequate reserve;

(v) if the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account or other lending institution, the division shall set the reserve factor at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined by the division to be solvent or positive and there is no outstanding loan;

(vi) the division shall set the reserve factor on or before January 1 of each year; and

(vii) money made available to the state under Section 903 of the Social Security Act, 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be considered in establishing the reserve factor under this section for the rate year 2005 or any following rate year.

(4) (a) Beginning January 1, 2009, an employer's overall contribution rate is:

(i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution rate multiplied by the reserve factor established under Subsection (3)(b),

calculated to four decimal places, disregarding any remaining fraction, plus the social contribution rate established under Subsection (2), and the result calculated to three decimal places, disregarding any remaining fraction;

(ii) if under Subsection (4)(a)(i), the overall contribution rate calculation for an employer is greater than 9% plus the applicable social contribution rate, the overall contribution rate for the employer shall be reduced to 9% plus the applicable social contribution rate; or

(iii) if under Subsection (4)(a)(i), the overall contribution rate calculation for a new employer is less than 1.1%, the overall contribution rate for the new employer shall be increased to 1.1%.

(b) Beginning January 1, 2012, an employer's overall contribution rate is:

(i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four decimal places, disregarding any remaining fraction, plus the social contribution rate established under Subsection (2), and the result calculated to three decimal places, disregarding any remaining fraction;

(ii) if under Subsection (4)(b)(i), the overall contribution rate calculation for an employer is greater than 7% plus the applicable social contribution rate, the overall contribution rate for the employer shall be reduced to 7% plus the applicable social contribution rate; or

(iii) if under Subsection (4)(b)(i), the overall contribution rate calculation for a new employer is less than 1.1%, the overall contribution rate for the new employer shall be increased to 1.1%.

(c) The overall contribution rate described under this Subsection (4) does not include the addition of any penalty applicable to an employer:

(i) as a result of delinquency in the payment of contributions as provided in Subsection (9); or

(ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).

(5) (a) Except as otherwise provided in this section, the basic contribution rate for a new employer is based on the average benefit cost rate experienced by employers of the major industry, as defined by department rule, to which the new employer belongs.

(b) Except as provided in Subsection (5)(c), by January 1 of each year, the basic contribution rate to be used in computing a new employer's overall contribution rate under Subsection (4) is the benefit cost rate that is the greater of:

(i) the amount calculated by dividing the total benefit costs charged back to both active and inactive employers of the same major industry for the last two fiscal years by the total taxable wages paid by those employers that were paid during the same time period, computed to four decimal places, disregarding any remaining fraction; or

(ii) 1%.

(c) If the major industrial classification assigned to a new employer is an industry for which a benefit cost rate does not exist because the industry has not operated in the state or has not been covered under this chapter, the employer's basic contribution rate is 5.4%. This basic contribution rate is used in computing the employer's overall contribution rate under Subsection (4).

(6) Notwithstanding any other provision of this chapter, and except as provided

in Subsection (7), if an employing unit that moves into this state is declared to be a qualified employer because it has sufficient payroll and benefit cost experience under another state, a rate shall be computed on the same basis as a rate is computed for all other employers subject to this chapter if that unit furnishes adequate records on which to compute the rate.

(7) An employer who begins to operate in this state after having operated in another state shall be assigned the maximum overall contribution rate until the employer acquires sufficient experience in this state to be considered a "qualified employer" if the employer is:

(a) regularly engaged as a contractor in the construction, improvement, or repair of buildings, roads, or other structures on lands;

(b) generally regarded as being a construction contractor or a subcontractor specialized in some aspect of construction; or

(c) required to have a contractor's license or similar qualification under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

(8) (a) If an employer acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition or transfers its trade or business, or a portion of its trade or business, under Subsection 35A-4-304(3)(a):

(i) for purposes of determining and establishing the acquiring party's qualifications for an experience rating classification, the payrolls of both employers during the qualifying period shall be jointly considered in determining the period of liability with respect to:

(A) the filing of contribution reports;

(B) the payment of contributions; and

(C) the benefit costs of both employers;

(ii) the transferring employer shall be divested of the transferring employer's unemployment experience provided the transferring employer had discontinued operations, but only to the extent as defined under Subsection 35A-4-304(3)(c); and

(iii) if an employer transfers its trade or business, or a portion of its trade or business, as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its employer's unemployment experience.

(b) An employing unit or prospective employing unit that acquires the unemployment experience of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.

(c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of the employer's business to another and by ceasing operations as of the date of the transfer, the transferring employer shall cease to be an employer, as defined by this chapter, as of the date of transfer.

(9) (a) A rate of less than the maximum overall contribution rate is effective only for new employers and to those qualified employers who, except for amounts due under division determinations that have not become final, paid all contributions prescribed by the division for the four consecutive calendar quarters in the fiscal year immediately preceding the computation date.

(b) Notwithstanding Subsections (1), (5), (6), and (8), an employer who fails to pay all contributions prescribed by the division for the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, except for amounts due under determinations that have not become final, shall pay a contribution rate equal to the overall contribution rate determined under the experience rating provisions of this chapter, plus a surcharge of 1% of wages.

(c) An employer who pays all required contributions shall, for the current contribution year, be assigned a rate based upon the employer's own experience as provided under the experience rating provisions of this chapter effective the first day of the calendar quarter in which the payment was made.

(d) Delinquency in filing contribution reports may not be the basis for denial of a rate less than the maximum contribution rate.

(10) If an employer makes a contribution payment based on the overall contribution rate in effect at the time the payment was made and a provision of this section retroactively reduces the overall contribution rate for that payment, the division:

(a) may not directly refund the difference between what the employer paid and what the employer would have paid under the new rate; and

(b) shall allow the employer to make an adjustment to a future contribution payment to offset the difference between what the employer paid and what the employer would have paid under the new rate.

Amended by Chapter 26, 2013 General Session

35A-4-304. Special provisions regarding transfers of unemployment experience and assignment rates.

(1) As used in this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.

(c) "Trade or business" includes the employer's workforce.

(d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall apply regarding assignment of rates and transfers of unemployment experience.

(3) (a) If an employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is common ownership, management, or control of the employers, then the unemployment experience attributable to each employer shall be combined into a common experience rate calculation.

(b) The contribution rates of the employers shall be recalculated and made effective upon the date of the transfer of trade or business as determined by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) (i) If one or more of the employers is a qualified employer at the time of the transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of this section shall be assigned an overall contribution rate under Subsection

35A-4-303(4), using combined unemployment experience rating factors, for the rate year during which the transfer occurred and for the subsequent three rate years.

(ii) If none of the employing units is a qualified employer at the time of the transfer, then all employing units that are party to the transfer described in Subsection (3)(a) shall be assigned the highest overall contribution rate applicable at the time of the transfer to any employer who is party to the acquisition for the rate year during which the transfer occurred and for subsequent rate years until the time when one or more of the employing units is a qualified employer.

(iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified employer, all the employing units shall be assigned an overall rate under Subsection 35A-4-303(4), using combined unemployment experience rating factors for subsequent rate years, not to exceed three years following the year of the transfer.

(d) The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of its trade or business when, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is now performed by the employer to whom the workforce is transferred.

(4) (a) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the division finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) The person shall be assigned the applicable new employer rate under Subsection 35A-4-303(5).

(c) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include:

(i) the cost of acquiring the business;

(ii) whether the person continued the business enterprise of the acquired business;

(iii) how long the business enterprise was continued; or

(iv) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of any of those subsections or provisions, the person is subject to the following penalties:

(i) (A) If the person is an employer, then the employer shall be assigned an overall contribution rate of 5.4% for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(B) If the person's business is already at 5.4% for any year, or if the amount of increase in the person's rate would be less than 2% for that year, then a penalty surcharge of contributions of 2% of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of not more than $5,000.

(B) The fine shall be deposited in the penalty and interest account established under Section 35A-4-506.

(b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this section may be prosecuted as unemployment insurance fraud.

(ii) The determination of the degree of an offense shall be measured by the total value of all contributions avoided or reduced or contributions sought to be avoided or reduced by the unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Amended by Chapter 15, 2012 General Session

35A-4-305. Collection of contributions -- Unpaid contributions to bear interest -- Offer to compromise.

(1) (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.

(b) (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division are subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than $25 with respect to each reporting period.

(ii) If a report is filed after the required time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.

(c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.

(ii) A penalty may not attach if within 10 days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and payment is made in accordance with those arrangements.

(d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the service charge imposed by Section 7-15-1 for dishonored instruments if:

(i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and

(ii) the instrument is dishonored or not paid by the institution against which it is drawn.

(e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectible and removed from the records of the division if:

(i) no assets belonging to the liable person and subject to attachment can be found; and

(ii) in the opinion of the division there is no likelihood of collection at a future date.

(f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Account created by Section 35A-4-506.

(g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

(2) (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of any information it may be able to obtain.

(b) The division shall give written notice of the determination to the employer.

(c) The determination is considered correct unless:

(i) the employer, within 10 days after mailing or personal delivery of notice of the determination, applies to the division for a review of the determination as provided in Section 35A-4-508; or

(ii) unless the division or its authorized representative of its own motion reviews the determination.

(d) The amount of contribution determined under Subsection (2)(a) is subject to penalties and interest as provided in Subsection (1).

(3) (a) If, after due notice, an employer defaults in the payment of contributions, interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.

(b) Civil actions brought under this section to collect contributions, interest, or penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

(i) heard by the court at the earliest possible date; and

(ii) entitled to preference upon the calendar of the court over all other civil actions except:

(A) petitions for judicial review under this chapter; and

(B) cases arising under the workers' compensation law of this state.

(c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments

and penalties due from employers or claimants located outside Utah, the division may employ private collectors providing debt collection services outside Utah.

(B) Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action.

(C) The notice shall advise the employer or claimant of the employer's or claimant's rights under this chapter and the applicable rules of the department.

(ii) (A) A private collector may receive as compensation up to 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or postjudgment remedy instituted by the private collector with the approval of the division.

(B) The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.

(iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

(iv) (A) A civil action may not be maintained by a private collector without specific prior written approval of the division.

(B) When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.

(d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).

(ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent disclosure is necessary in a civil action to enforce collection of the amounts due.

(e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.

(4) (a) In the event of a distribution of an employer's assets under an order of a court under the laws of Utah, including a receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $400 to each claimant, earned within five months of the commencement of the proceeding.

(b) If an employer commences a proceeding in the Federal Bankruptcy Court under a chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

(5) (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the

contributions due, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund the money collected by virtue of the warrant by a time to be specified in the warrant, not more than 60 days from the date of the warrant.

(b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in the sheriff's county.

(ii) The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

(c) The amount of the docketed warrant shall:

(i) have the force and effect of an execution against all personal property of the delinquent employer; and

(ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by a district court and docketed in the office of the clerk.

(d) After docketing, the sheriff shall:

(i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and

(ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner.

(6) (a) Contributions imposed by this chapter are a lien upon the property of an employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.

(b) (i) An employer's successor, successors, or assigns, if any, are required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until the former owner produces a receipt from the division showing that they have been paid or a certificate stating that no amount is due.

(ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser is personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.

(7) (a) If an employer is delinquent in the payment of a contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.

(b) A person notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:

(i) the division has consented to a transfer or disposition; or

(ii) 20 days after the receipt of the notice.

(c) All persons notified under Subsection (7)(a) shall, within five days after receipt of the notice, advise the division of credits, other personal property, or other

debts in their possession, under their control or owing by them, as the case may be.

(8) (a) (i) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter.

(ii) The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.

(b) (i) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period.

(ii) The report shall be on a form prescribed by the division and contain all information prescribed by the division.

(c) (i) For each failure by an employer to conform to this Subsection (8) the division shall, unless good cause is shown, assess a $50 penalty if the filing was not more than 15 days late.

(ii) If the filing is more than 15 days late, the division shall assess an additional penalty of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250 per filing.

(iii) The penalty is to be collected in the same manner as contributions due under this chapter.

(d) (i) The division shall prescribe rules providing standards for determining which contribution reports shall be filed on magnetic or electronic media or in other machine-readable form.

(ii) In prescribing these rules, the division:

(A) may not require an employer to file contribution reports on magnetic or electronic media unless the employer is required to file wage data on at least 250 employees during any calendar quarter or is an authorized employer representative who files quarterly tax reports on behalf of 100 or more employers during any calendar quarter;

(B) shall take into account, among other relevant factors, the ability of the employer to comply at reasonable cost with the requirements of the rules; and

(C) may require an employer to post a bond for failure to comply with the rules required by this Subsection (8)(d).

(9) (a) (i) An employer liable for payments in lieu of contributions shall file Reimbursable Employment and Wage Reports.

(ii) The reports are due on the last day of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date.

(iii) A report postmarked on or before the due date is considered timely.

(b) (i) Unless the employer can show good cause, the division shall assess a $50 penalty against an employer who does not file Reimbursable Employment and Wage Reports within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

(ii) If the filing is more than 15 days late, the division shall assess an additional penalty of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250 per filing.

(iii) The division shall assess and collect the penalties referred to in this

Subsection (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

(10) If a person liable to pay a contribution or benefit overpayment imposed by this chapter neglects or refuses to pay it after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.

(11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

(b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a warrant with the clerk of the district court.

(ii) For the purposes of this Subsection (11)(b):

(A) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.

(B) "Mechanics' lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.

(C) "Person" means:

(I) an individual;

(II) a trust;

(III) an estate;

(IV) a partnership;

(V) an association;

(VI) a company;

(VII) a limited liability company;

(VIII) a limited liability partnership; or

(IX) a corporation.

(D) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.

(E) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:

(I) the property is in existence and the interest has become protected under the

law against a subsequent judgment lien arising out of an unsecured obligation; and

(II) to the extent that, at that time, the holder has parted with money or money's worth.

(12) (a) Except in cases involving a violation of unemployment compensation provisions under Section 76-8-1301, Subsection 35A-4-304(5), or Subsection 35A-4-405(5), and at the discretion of the division, the division may accept an offer in compromise from an employer or claimant to reduce past due debt arising from contributions or benefit overpayments imposed under this chapter.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules for allowing an offer in compromise provided under Subsection (12)(a).

Amended by Chapter 15, 2012 General Session

35A-4-306. Charging benefit costs to employer.

(1) Benefit costs of former workers of an employer will be charged to the employer in the same proportion as the wages paid by that employer in the base period bear to the total wages of all employers of that worker in the base period, calculated to the nearest five decimal places.

(2) Notification by the division that a worker has filed an initial claim for unemployment insurance benefits will be sent to all base-period employers and all subsequent employers prior to the payment of benefits. Any employing unit that receives a notice of the filing of a claim may protest payment of benefits to former employees or charges to the employer if the protest is filed within 10 days after the date the notice is issued.

(3) On or before November 1 of each year beginning November 1, 1984, each employer shall receive notification of all benefit costs of former workers that have been charged to that employer in the immediately preceding fiscal year. Any employing unit that receives a notice of benefit charges may protest the correctness of the charges if the protest is filed within 30 days after the date the notice is issued.

(4) On written request made by an employer, corrections or modifications of the employer's wages shall be taken into account for the purpose of redetermining the employer's contribution rate. The request shall be made to the division no later than the end of the calendar year following the year for which the contribution rate is assigned. The division may, within a like period upon its own initiative, redetermine an employer's contribution rate.

(5) (a) If no later than three years after the date on which any contributions or interest or penalty for contributions were due, an employer who has paid the contributions, interest, or penalty may make application for an adjustment in connection with subsequent contribution payments, or for a refund because the adjustment cannot be made, and the division shall determine that the contributions or interest or penalty or any portion thereof was erroneously collected, the division shall allow the employer to make an adjustment, without interest, in connection with subsequent contribution payments by the employer, or if the adjustment cannot be made, the division shall refund that amount, without interest.

(b) Refunds of contributions shall be made from the clearing account or the

benefit account in the fund, and refunds of interest and penalty shall be made from the Special Administrative Expense Account or from the interest and penalty money in the clearing account of the fund.

(c) For like cause and within the same period, an adjustment or refund may be made on the division's own initiative.

(d) Decisions with respect to applications for refund are final unless the employing unit, within 10 days after the mailing or personal delivery of notice of the decision, applies to the division for a review of the decision as provided in Section 35A-4-508.

Amended by Chapter 278, 2010 General Session

35A-4-307. Social costs -- Relief of charges.

(1) Social costs consist of the following benefit costs:

(a) Benefit costs of an individual will not be charged to a base-period employer and are considered social costs if the individual's separation from that employer occurred under the following circumstances:

(i) the individual was discharged by the employer or voluntarily quit employment with the employer for disqualifying reasons, but subsequently requalified for benefits and actually received benefits;

(ii) the individual received benefits following a quit which was not attributable to the employer;

(iii) the individual received benefits following a discharge for nonperformance due to medical reasons;

(iv) the individual received benefits while attending the first week of mandatory apprenticeship training; or

(v) the individual received benefits after quitting voluntarily to accompany or follow a spouse who is a member of the United States armed forces as described in Subsection 35A-4-405(1)(e).

(b) Social costs are benefit costs that are or have been charged to an employer who has terminated coverage and is no longer liable for contributions, less the amount of contributions paid by the employer during the same time period.

(c) The difference between the benefit charges of all employers whose benefit ratio exceeds the maximum overall contribution rate and the amount determined by multiplying the taxable payroll of the same employers by the maximum overall contribution rate is a social cost.

(d) Benefit costs attributable to a concurrent base-period employer will not be charged to that employer if the individual's customary hours of work for that employer have not been reduced.

(e) Benefit costs incurred during the course of division-approved training will not be charged to base-period employers.

(f) Benefit costs will not be charged to employers if the costs are attributable to:

(i) the state's share of extended benefits;

(ii) uncollectible benefit overpayments; or

(iii) the proportion of benefit costs of combined wage claims that are chargeable to Utah employers and are insufficient when separately considered for a monetary

eligible claim under Utah law and which have been transferred to a paying state.

(g) Benefit costs that are not charged to an employer and not described in this Subsection (1) are also social costs.

(2) Subsection (1) applies only to contributing employers and not to employers that have elected to finance the payment of benefits in accordance with Section 35A-4-309 or 35A-4-311.

Amended by Chapter 289, 2014 General Session

35A-4-308. Bonds to ensure compliance.

(1) (a) The division, whenever it considers it necessary to ensure compliance with this chapter, may require any employer, subject to the contribution imposed hereunder, to deposit with it any bond or security as the division shall determine.

(b) The bond or security may be sold by the division at public sale, if it becomes necessary, in order to recover any tax, interest, or penalty due.

(c) Notice of the sale may be served upon the employer who deposited the securities personally or by mail. If by mail, notice sent to the last-known address as the same appears in the records of the division is sufficient for purposes of this requirement.

(d) Upon the sale, the surplus, if any, above the amounts due, shall be returned to the employer who deposited the security.

(2) (a) If an employer fails to comply with Subsection (1), the district court of the county in which the employer resides or in which the employer employs workers shall, upon the commencement of a suit by the division for that purpose, enjoin the employer from further employing workers in this state or continuing in business until the employer has complied with Subsection (1).

(b) Upon filing of a suit for such purpose by the division, the court shall set a date for hearing and cause notice to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of contributions.

(1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:

(a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of the nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.

(b) (i) Any nonprofit organization that is, or becomes, subject to this chapter may

elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter.

(ii) The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.

(d) (i) Any nonprofit organization that has been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions.

(ii) This election is not terminable by the organization for that year or the next year.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.

(f) (i) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election.

(ii) These determinations are subject to reconsideration, appeal, and review in accordance with Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with this Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of nonprofit organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during this month or other prescribed period that is attributable to service in the employ of the organization.

(b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(d).

(c) Payments made by any nonprofit organization under this Subsection (2) may not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(d) (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Division of Adjudication, setting forth the grounds for the application or appeal in accordance with Section 35A-4-508.

(ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.

(iii) Any redetermination is conclusive on the organization unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Division of Adjudication in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.

(iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.

(e) Past due payments of amounts in lieu of contributions are subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination is effective for that and the next contribution year.

(4) (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division.

(b) The amount of the deposit shall be determined in accordance with this Subsection (4).

(c) (i) The amount of the deposit required by this Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable.

(ii) If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit is as determined by the division.

(d) (i) Any deposit of money in accordance with this Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this Subsection (4).

(ii) The division may deduct from the money deposited under this Subsection (4) by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(e).

(iii) The division shall require the organization within 30 days following any deduction from a money deposit under this Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.

(iv) (A) The division may, at any time, review the adequacy of the deposit made by any organization.

(B) If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within 30 days

of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as considered appropriate.

(e) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.

(f) (i) Termination under Subsection (4)(e) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.

(ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.

(5) (a) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of the employer.

(b) If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (5)(c) or (d).

(c) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by that employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(d) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each of those employers shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(6) (a) (i) Two or more employers who have become liable for payments in lieu of contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers.

(ii) Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).

(b) (i) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account.

(ii) This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group is liable for

payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

(d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.

(7) (a) An employing unit that acquires a nonprofit organization or substantially all the assets of a nonprofit organization that has elected reimbursable coverage as defined in Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.

(b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Amended by Chapter 297, 2011 General Session

35A-4-310. Employing units.

(1) (a) Any employing unit that is or becomes an employer subject to this chapter within any calendar quarter is subject to this chapter during the entire calendar quarter.

(b) (i) No employing unit is liable as an employer under Section 35A-4-302 for any period prior to three calendar years immediately preceding the calendar year in which the division determines the employing unit to be an employer as defined in Section 35A-4-203.

(ii) This limitation does not apply if the division determines that the employing unit knowingly or willfully failed to report to the division to avoid liability for contributions imposed by this chapter.

(2) Notwithstanding the other provisions of this section, the division may on its own initiative terminate coverage when it finds that an employing unit had no calendar quarter within the preceding calendar year during which there were wages paid for employment and the division finds that during the preceding calendar year the employing unit did not meet any of the conditions for subjectivity to this chapter.

(3) (a) (i) An employing unit not otherwise subject to this chapter that files with the division its written election to become an employer subject to this chapter for not less than two calendar years shall, with the written approval of the election by the division, become an employer subject to this chapter to the same extent as all other employers, as of the date stated in the approval.

(ii) The employing unit shall cease to be subject to this chapter as of January 1 of any calendar year subsequent to the two calendar years, referred to in Subsection (3)(a)(i) only if, at least 30 days prior to the first day of January, it has filed with the

division a written notice to the effect.

(b) (i) Services which do not constitute employment as defined in this chapter shall, upon the filing by the employing unit for whom the services are performed of a written election that services performed by individuals in its employ in one or more distinct establishments or places of work shall be considered to constitute employment for all the purposes of this chapter for not less than two calendar years, and upon the written approval of the election by the division, be considered to constitute employment subject from and after the date stated in the approval.

(ii) The services referred to in Subsection (3)(b)(i) shall cease to be considered to be employment subject to this chapter as of January 1 of any calendar year subsequent to the two calendar years only if, at least 30 days prior to the first day of January, the employing unit has filed with the division a written notice to that effect.

Amended by Chapter 7, 2004 General Session

35A-4-311. Coverage and liability of governmental units or Indian tribal units -- Payments in lieu of contributions -- Delinquencies -- Payments to division.

(1) Notwithstanding any other provisions of this chapter, benefits paid to employees of counties, cities, towns, school districts, political subdivisions, or their instrumentalities or Indian tribes or tribal units shall be financed in accordance with the following provisions:

(a) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay contributions under the provisions of Section 35A-4-302, or may elect to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and, as provided in Subsection (4), the extended benefits attributable to service in the employ of such organization, and paid to individuals for weeks of unemployment that begin during the effective period of such election.

(b) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter by filing a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any county, city, town, school district, political subdivision, or instrumentality thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election. A notice terminating such election shall be filed by January 31 of the year in which the termination is to be effective.

(d) Any county, city, town, school district, political subdivision, or instrumentality thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions;

the organization may not terminate such election for a period of two contribution years.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.

(f) The division, in accordance with department rules, shall notify each county, city, town, school district, political subdivision, or Indian tribes or tribal units, or their instrumentalities of any determination that it may make of its status as an employer, or the effective date of any election which it makes, and of any termination of such election. The determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each county, city, town, school district, political subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits and, as provided in Subsection (4), the amount of extended benefits paid during such month or other prescribed period that is attributable to service in the employ of such county, city, town, school district, political subdivision, or instrumentality thereof.

(b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(c).

(c) (i) The amount due specified in any bill from the division shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or otherwise delivered to it, the governmental unit or tribal unit files an application for redetermination by the division or an appeal, setting forth the grounds for such application or appeal.

(ii) Upon an application for redetermination the division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination.

(iii) Any such redetermination shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the grounds for the appeal.

(iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with the provisions of Section 35A-4-508.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3) (a) If any governmental unit or tribal unit is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the governmental unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination shall be effective for

that and the next contribution year.

(b) (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Subsection 35A-4-311(1), for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option reinstated if, after a period of one year:

(A) all contributions have been made timely; and

(B) no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act; and

(B) will cause the Indian tribe to lose the option to make payments in lieu of contributions.

(4) Each governmental unit or tribal unit liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of extended benefits paid that are attributable to service in the employ of such governmental unit or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of contributions shall, with respect to extended benefit costs for weeks of unemployment beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979, shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (4)(a) or (4)(b).

(a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(5) (a) Two or more Indian tribe or tribal unit employers who have become liable

for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (5).

(b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than one contribution year and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

Amended by Chapter 297, 2011 General Session

35A-4-312. Records.

(1) (a) An employing unit shall keep true and accurate work records containing information the department may prescribe by rule.

(b) A record shall be open to inspection and subject to being copied by the division or its authorized representatives at a reasonable time and as often as necessary.

(c) An employing unit shall make a record available in the state for three years after the calendar year in which the services are rendered.

(2) The division may require from an employing unit a sworn or unsworn report with respect to a person employed by the employing unit that the division considers necessary for the effective administration of this chapter.

(3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from an individual may not be published or open to public inspection in a manner revealing the employing unit's or individual's identity.

(4) (a) The information obtained by the division under this section may not be used in court or admitted into evidence in an action or proceeding, except:

(i) in an action or proceeding arising out of this chapter;

(ii) if the Labor Commission enters into a written agreement with the division under Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:

(A) Title 34, Chapter 23, Employment of Minors;

(B) Title 34, Chapter 28, Payment of Wages;

(C) Title 34, Chapter 40, Utah Minimum Wage Act; or

(D) Title 34A, Utah Labor Code;

(iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and Section 63G-2-207; or

(iv) under the terms of a written agreement between the Office of State Debt Collection and the division as provided in Subsection (5).

(b) The information obtained by the division under this section shall be disclosed to:

(i) a party to an unemployment insurance hearing before an administrative law judge of the department or a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party's case; or

(ii) an employer, upon request in writing for information concerning a claim for a benefit with respect to a former employee of the employer.

(5) The information obtained by the division under this section may be disclosed to:

(a) an employee of the department in the performance of the employee's duties in administering this chapter or other programs of the department;

(b) an employee of the Labor Commission for the purpose of carrying out the programs administered by the Labor Commission;

(c) an employee of the Department of Commerce for the purpose of carrying out the programs administered by the Department of Commerce;

(d) an employee of the governor's office or another state governmental agency administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;

(e) an employee of another governmental agency that is specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;

(f) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in:

(i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:

(A) a workers' compensation program; or

(B) public assistance funds; or

(ii) the recovery of overpayments of workers' compensation or public assistance funds;

(g) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;

(h) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of:

(i) audit verification or simplification;

(ii) state or federal tax compliance;

(iii) verification of a code or classification of the:

(A) 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(B) 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(iv) statistics;

(i) an employee or contractor of the department or an educational institution, or other governmental entity engaged in workforce investment and development activities under the Workforce Investment Act of 1998 for the purpose of:

(i) coordinating services with the department;

(ii) evaluating the effectiveness of those activities; and

(iii) measuring performance;

(j) an employee of the Governor's Office of Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, code or classification of an employer, and type of ownership of Utah employers;

(k) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure;

(l) an individual whose wage data is submitted to the department by an employer, if no information other than the individual's wage data and the identity of the employer who submitted the information is provided to the individual;

(m) an employee of the Insurance Department for the purpose of administering Title 31A, Chapter 40, Professional Employer Organization Licensing Act;

(n) an employee of the Office of State Debt Collection for the purpose of collecting state accounts receivable as provided in Section 63A-3-502; or

(o) a creditor, under a court order, to collect on a judgment as provided in Section 35A-4-314.

(6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)(a), (g), and (o), may be made if:

(a) the division determines that the disclosure will not have a negative effect on:

(i) the willingness of employers to report wage and employment information; or

(ii) the willingness of individuals to file claims for unemployment benefits; and

(b) the agency enters into a written agreement with the division in accordance with rules made by the department.

(7) (a) The employees of a division of the department other than the Workforce Development and Information Division and the Unemployment Insurance Division or an agency receiving private information from the division under this chapter are subject to the same requirements of privacy and confidentiality and to the same penalties for misuse or improper disclosure of the information as employees of the division.

(b) Use of private information obtained from the department by a person or for a purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

Amended by Chapter 473, 2013 General Session

35A-4-312.5. Suspected misuse of personal identifying information.

(1) As used in this section:

(a) "Child identity protection plan" is a program operated by the attorney general that uses IRIS and allows the attorney general to enter into an agreement with a third party to transmit verified personal information of a person younger than 18 years of age through secured means to enable the protection of the person's Social Security number from misuse.

(b) "IRIS" means the Identity Theft Reporting Information System operated by the attorney general.

(c) "Personal identifying information" has the same meaning as defined in Section 76-6-1102.

(d) "Suspected misuse of personal identifying information" includes:

(i) a Social Security number under which wages are being reported by two or more individuals; or

(ii) a Social Security number of an individual under the age of 18 with reported wages exceeding $1,000 for a single reporting quarter.

(2) Notwithstanding Section 35A-4-312, if the department records disclose a suspected misuse of personal identifying information by an individual other than the purported owner of the information, or if a parent, guardian, or individual under the age of 18 is enrolling or has enrolled in the child identity protection plan, the department may:

(a) inform the purported owner of the information or, if the purported owner is a minor, the minor's parent or guardian, of the suspected misuse; and

(b) provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating an identity fraud violation.

Amended by Chapter 57, 2011 General Session

35A-4-313. Determination of employer and employment.

The division or its authorized representatives may, upon its own motion or upon application of an employing unit, determine whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of, an employer constitute employment for the employing unit. The determinations may constitute the basis for determination of contribution liability under Subsection 35A-4-305(2) and be subject to review and appeal as provided.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-314. Disclosure of information for debt collection -- Court order -- Procedures -- Use of information restrictions -- Penalties.

(1) The division shall disclose to a creditor who has obtained judgment against a debtor the name and address of the last known employer of the debtor if:

(a) the judgment creditor obtains a court order requiring disclosure of the information as described in Subsection (2); and

(b) the judgment creditor completes the requirements described in Subsection (3), including entering into a written agreement with the division.

(2) (a) A court shall grant an order to disclose the information described in Subsection (1) if, under the applicable Utah Rules of Civil Procedure:

(i) the judgment creditor files a motion with the court, which includes a copy of the judgment, and serves a copy of the motion to the judgment debtor and the division;

(ii) the judgment debtor and the division have the opportunity to respond to the motion; and

(iii) the court denies or overrules any objection to disclosure in the judgment

debtor's and the division's response.

(b) A court may not grant an order to disclose the information described in Subsection (1), if the court finds that the division has established that disclosure will have a negative effect on:

(i) the willingness of employers to report wage and employment information; or

(ii) the willingness of individuals to file claims for unemployment benefits.

(c) The requirements of Subsection 63G-2-202(7) and Section 63G-2-207 do not apply to information sought through a court order as described in this section.

(3) If a court order is granted in accordance with this section, a judgment creditor shall:

(a) provide to the division a copy of the order requiring the disclosure;

(b) enter into a written agreement with the division, in a form approved by the division;

(c) pay the division a reasonable fee that reflects the cost for processing the request as established by department rule; and

(d) comply with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9 with respect to information received from the division under this section.

(4) If a judgment creditor complies with Subsection (3), the division shall provide the information to the judgment creditor within 14 business days after the day on which the creditor complies with Subsection (3).

(5) A judgment creditor may not:

(a) use the information obtained under this section for a purpose other than satisfying the judgment between the creditor and debtor; or

(b) disclose or share the information with any other person.

(6) The division may audit a judgment creditor or other party receiving information under this section for compliance with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9.

(7) If a judgment creditor or other party fails to comply with the data safeguard and security measures under 20 C.F.R. Sec. 603.9, the judgment creditor or other party is subject to a civil penalty of no more than $10,000 enforceable by the Utah Office of the Attorney General as follows:

(a) the attorney general, on the attorney general's own behalf or on behalf of the division, may file an action in district court to enforce the civil penalty; and

(b) if the attorney general prevails in enforcing the civil penalty against the judgment creditor or other party:

(i) the attorney general is entitled to an award for reasonable attorney fees, court costs, and investigative expenses; and

(ii) the civil penalty shall be deposited into the special administrative expense account described in Subsection 35A-4-506(1).

Enacted by Chapter 473, 2013 General Session

35A-4-401. Benefits -- Weekly benefit amount -- Computation of benefits -- Department to prescribe rules -- Notification of benefits -- Bonuses.

(1) (a) Benefits are payable from the fund to an individual who is or becomes

unemployed and eligible for benefits.

(b) All benefits shall be paid through the employment offices or other agencies designated by the division in accordance with rules the department may prescribe in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) (i) Except as otherwise provided in Subsection (2)(a)(ii), an individual's "weekly benefit amount" is an amount equal to 1/26th, disregarding any fraction of $1, of the individual's total wages for insured work paid during that quarter of the base period in which the total wages were highest.

(ii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, an individual's weekly benefit amount is an amount equal to 1/26th minus $5, disregarding any fraction of $1, of the individual's total wages for insured work paid during that quarter of the base period in which the total wages were highest.

(b) (i) The weekly benefit amount may not exceed 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year, disregarding any fraction of $1.

(ii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, the weekly benefit amount may not exceed 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year minus $5, disregarding any fraction of $1.

(c) (i) Except as otherwise provided in Subsections (2)(c)(ii) and (iii), the "weekly benefit amount" of an individual who is receiving, or who is eligible to receive, based upon the individual's previous employment, a pension, which includes a governmental, Social Security, or other pension, retirement or disability retirement pay, under a plan maintained or contributed to by a base-period employer is the "weekly benefit amount" which is computed under this section less 100% of the retirement benefits, that are attributable to a week, disregarding any fraction of $1.

(ii) With respect to an individual whose benefit year begins after July 1, 2004, and ends on or before the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, the "weekly benefit amount" of that individual, who is receiving or who is eligible to receive Social Security benefits based upon the individual's previous employment, is the "weekly benefit amount" which is computed under this section less 50% of the individual's Social Security benefits that are attributable to the week, but not below zero.

(iii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, this Subsection (2)(c) and Subsection (2)(d) do not apply to Social Security benefits an individual is receiving or is eligible to receive as they are not considered retirement benefits for purposes of those subsections.

(d) (i) (A) The weekly benefit amount and the potential benefits payable to an individual who, subsequent to the commencement of the individual's benefit year, becomes or is determined to be eligible to receive retirement benefits or increased retirement benefits, shall be recomputed effective with the first calendar week during the individual's benefit year with respect to which the individual is eligible to receive retirement benefits or increased retirement benefits.

(B) The new weekly benefit amount shall be determined under this Subsection

(2).

(ii) As recomputed the total benefits potentially payable, commencing with the effective date of the recomputation, shall be equal to the recomputed weekly benefit amount times the quotient obtained by dividing the potential benefits unpaid prior to the recomputation by the initial weekly benefit amount, disregarding fractions.

(3) (a) An eligible individual who is unemployed in any week shall be paid with respect to that week a benefit in an amount equal to the individual's weekly benefit amount less that part of the individual's wage payable to the individual with respect to that week that is in excess of 30% of the individual's weekly benefit amount.

(b) The resulting benefit payable shall disregard any fraction of $1.

(c) For the purpose of this Subsection (3) "wages" does not include a grant paid to the individual as public assistance.

(4) (a) An otherwise eligible individual is entitled during a benefit year to a total amount of benefits determined by multiplying the individual's weekly benefit amount times the individual's potential duration.

(b) To determine an individual's potential duration, the individual's total wages for insured work paid during the base period is multiplied by 27%, disregarding any fraction of $1, and divided by the individual's weekly benefit amount, disregarding any fraction, but not less than 10 nor more than 26.

(5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may by rule prescribe:

(i) that the existence of unemployment, eligibility for benefits, and the amount of benefits payable shall be determined in the case of an otherwise eligible individual who, within a week or other period of unemployment, is separated from or secures work on a regular attachment basis for that portion of the week or other period of unemployment occurring before or after separation from or securing of work; and

(ii) in the case of an individual working on a regular attachment basis, eligibility for benefits and the amount of benefits payable for periods of unemployment longer than a week.

(b) The rules made shall be reasonably calculated to secure general results substantially similar to those provided by this chapter with respect to weeks of unemployment.

(6) The division shall, in all cases involving actual or potential disqualifying issues and prior to the payment of benefits to an eligible individual, notify the individual's most recent employer of the eligibility determination.

(7) Upon written request of an individual made under rules of the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all remuneration for insured work paid to the individual during the individual's period in the form of a bonus or lump-sum payment shall, for benefit purposes, be apportioned to the calendar quarters in which the remuneration was earned.

Amended by Chapter 255, 2013 General Session

35A-4-402. Extended benefits.

(1) Except when the result would be inconsistent with the other provisions of this section or the rules of the department, the provisions of this chapter that apply to claims

for or payments of regular benefits apply to claims for and payments of extended benefits.

(2) An individual is eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to that week the individual:

(a) is an "exhaustee" as defined in this section;

(b) has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(c) has satisfied the federal requirements as adopted by state regulation for the receipt of extended benefits.

(3) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period is an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(4) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year is the lesser of the following amounts:

(a) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(b) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year; or

(c) 39 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him under this chapter with respect to the benefit year.

(5) Notwithstanding any other provision of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade adjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(6) (a) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the division shall make an appropriate public announcement.

(b) Computations required by Subsection (7)(f) shall be made by the division, in accordance with regulations prescribed by the United States Secretary of Labor.

(7) As used in this section:

(a) "Extended benefit period" means a period that:

(i) begins with the third week after a week for which there is a state "on" indicator; and

(ii) ends with either:

(A) the third week after the first week for which there is a state "off" indicator; or

(B) after the 13th consecutive week of duration of that period, whichever occurs later; however, no extended benefit period may begin by reason of a state "on" indicator

before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(b) There is a "state 'on' indicator" for this state for a week if the division determines, in accordance with the regulations of the Secretary of Labor, that for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter equaled or exceeded 120% of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years and that the rate equaled or exceeded 4% until the weeks beginning after September 25, 1982, at which time it will become 5%.

(c) There is a "state 'off' indicator" for this state for a week if the division determines, in accordance with the regulations of the Secretary of Labor, that for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter was less than 120% of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years or that the rate was less than 4% until the weeks beginning after September 25, 1982, at which time it will become 5%.

(d) "Rate of insured unemployment," for purposes of Subsections (7)(b) and (7)(c), means the percentage derived by dividing the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the division on the basis of its reports to the Secretary of Labor, by the average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period.

(e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen under 5 U.S.C. Chapter 85, other than extended benefits.

(f) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen under 5 U.S.C. Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(g) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within the extended benefit period, any weeks thereafter which begin in that period.

(h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(i) has received, prior to that week, all of the regular benefits that were available to him under this chapter or any other state law, including dependent's allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85, in his current benefit year that includes such week. An individual, for the purposes of this subsection, shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages or employment, or both, that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(ii) has no, or insufficient, wages or employment or both on the basis of which he could establish a new benefit year that would include that week, his benefit year having expired prior to that week; and

(iii) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, or any other federal laws as are specified in regulations issued by the Secretary of Labor and has not received, and is not seeking, unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada. However, if that person is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under that law he is considered an "exhaustee," provided that the reference in this subsection to the Virgin Islands shall be inapplicable effective on the day on which the U. S. Secretary of Labor approves under Section 3304 (a) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a), an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

(i) "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a).

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-403. Eligibility of individual -- Conditions -- Furnishing reports -- Weeks of employment -- Successive benefit years.

(1) Except as provided in Subsections (2) and (3), an unemployed individual is eligible to receive benefits for any week if the division finds:

(a) the individual has made a claim for benefits for that week in accordance with rules the department may prescribe, except as provided in Subsection (4);

(b) the individual has registered for work with the department and acted in a good faith effort to secure employment during each and every week for which the individual made a claim for benefits under this chapter in accordance with rules the department may prescribe, except as provided in Subsection (4);

(c) the individual is able to work and is available for work during each and every week for which the individual made a claim for benefits under this chapter;

(d) the individual has been unemployed for a waiting period of one week for each benefit year, but a week may not be counted as a week of unemployment for the purpose of this Subsection (1)(d):

(i) unless it occurs within the benefit year that includes the week for which the individual claims benefits;

(ii) if benefits have been paid for the claim; or

(iii) unless the individual was eligible for benefits for the week as provided in this section and Sections 35A-4-401 and 35A-4-405, except for the requirement of this Subsection (1)(d);

(e) (i) the individual has furnished the division separation and other information the department may prescribe by rule, or proves to the satisfaction of the division that the individual had good cause for failing to furnish the information;

(ii) if an employer fails to furnish reports concerning separation and employment

as required by this chapter and rules adopted under the chapter, the division shall, on the basis of information it obtains, determine the eligibility and insured status of an individual affected by that failure and the employer is not considered to be an interested party to the determination;

(f) (i) the individual's base-period wages were at least 1-1/2 times the individual's wages for insured work paid during that quarter of the individual's base period in which the individual's wages were highest; or

(ii) for any claimant whose benefit year is effective on or before January 1, 2011, the individual shows to the satisfaction of the division that the individual worked at least 20 weeks in insured work during the individual's base-period and earned wages of at least 5% of the monetary base-period wage requirement each week, rounded to the nearest whole dollar, provided that the individual's total base-period wages were not less than the monetary base-period wage requirement as defined in Section 35A-4-201; and

(g) (i) the individual applying for benefits in a successive benefit year has had subsequent employment since the effective date of the preceding benefit year equal to at least six times the individual's weekly benefit amount, in insured work; and

(ii) the individual's total wages and employment experience in the individual's base period meet the requirements specified in Subsection (1)(f).

(2) (a) For purposes of this Subsection (2), "suitable employment" means:

(i) work of a substantially equal or higher skill level than the individual's past adversely affected employment as defined for purposes of the Trade Act of 1974; and

(ii) wages for that work at not less than 80% of the individual's average weekly wage as determined for purposes of the Trade Act of 1974.

(b) (i) An individual in training with the approval of the division is not ineligible to receive benefits by reason of nonavailability for work, failure to search for work, refusal of suitable work, failure to apply for or to accept suitable work, or not having been unemployed for a waiting period of one week for any week the individual is in the approved training.

(ii) For purposes of Subsection (2)(b)(i), the division shall approve any mandatory apprenticeship-related training.

(c) Notwithstanding any other provision of this chapter, the division may not deny an otherwise eligible individual benefits for any week:

(i) because the individual is in training approved under Section 236 (a)(1) of the Trade Act of 1974, 19 U.S.C. 2296(a);

(ii) for leaving work to enter training described in Subsection (2)(c)(i) if the work left is not suitable employment; or

(iii) because of the application to any such week in training of provisions in this law or any applicable federal unemployment compensation law relating to availability for work, active search for work, or refusal to accept work.

(3) An individual located in a foreign country for three or more days of a week and who is otherwise eligible for benefits is only eligible to receive benefits for that week if:

(a) the individual is legally authorized to work in the foreign country; and

(b) the state and the foreign country have entered into a reciprocal agreement concerning the payment of unemployment benefits.

(4) The department may, by rule, waive or alter either or both of the requirements of Subsections (1)(a) and (b) as to:

(a) individuals attached to regular jobs;

(b) a disaster in Utah as declared by the president of the United States or by the state's governor after giving due consideration to factors directly associated with the disaster, including:

(i) the disaster's impact on employers and their ability to employ workers in the affected area in Utah;

(ii) the disaster's impact on claimants and their ability to comply with filing requirements in the affected area in Utah; and

(iii) the magnitude of the disaster and the anticipated time for recovery; and

(c) cases or situations when it finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this chapter, as long as the rule does not conflict with Subsection 35A-4-401(1).

Amended by Chapter 371, 2014 General Session

35A-4-404. Eligibility for benefits after receiving workers' compensation or occupational disease compensation.

(1) Notwithstanding any requirements involving base periods or other benefit compensational factors provided for under this chapter a person who has had a continuous period of sickness or injury for which the person was compensated under the workers' compensation or the occupational disease laws of this state or under federal law shall, if the person is otherwise eligible, thereafter be entitled to receive the unemployment compensation benefits the person would have been entitled to receive under the law and regulations based on the person's potential eligibility at the time of the person's last employment.

(2) Benefit rights are not preserved under this section unless the individual:

(a) files a claim for benefits with respect to a week no later than 90 days after the end of the continuous period of sickness or injury; and

(b) files the claim with respect to a week within the 36-month period immediately following the commencement of such period of sickness or injury.

Amended by Chapter 297, 2011 General Session

35A-4-405. Ineligibility for benefits.

Except as otherwise provided in Subsection (5), an individual is ineligible for benefits or for purposes of establishing a waiting period:

(1) (a) For the week in which the claimant left work voluntarily without good cause, if so found by the division, and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount.

(b) A claimant may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.

(c) Using available information from employers and the claimant, the division

shall consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(d) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so without good cause for purposes of this Subsection (1).

(e) A claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so with good cause for purposes of this Subsection (1) and is eligible to receive benefits if:

(i) the claimant's spouse is a member of the United States armed forces and the claimant's spouse has been relocated by a full-time assignment scheduled to last at least 180 days while on:

(A) active duty as defined in 10 U.S.C. Sec. 101(d)(1); or

(B) active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6);

(ii) it is impractical as determined by the division for the claimant to commute to the previous work from the new locality;

(iii) the claimant left work voluntarily no earlier than 15 days before the scheduled start date of the spouse's active-duty assignment; and

(iv) the claimant otherwise meets and follows the eligibility and reporting requirements of this chapter, including registering for work with the division or, if the claimant has relocated to another state, the equivalent agency of that state.

(2) (a) For the week in which the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which is deliberate, willful, or wanton and adverse to the employer's rightful interest, if so found by the division, and thereafter until the claimant has earned an amount equal to at least six times the claimant's weekly benefit amount in bona fide covered employment.

(b) For the week in which the claimant was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks.

(c) Wage credits shall be deleted from the claimant's base period, and are not available for this or any subsequent claim for benefits.

(3) (a) (i) If the division finds that the claimant has failed without good cause to properly apply for available suitable work, to accept a referral to suitable work offered by the employment office, or to accept suitable work offered by an employer or the employment office.

(ii) The ineligibility continues until the claimant has performed services in bona fide covered employment and earned wages for the services in an amount equal to at least six times the claimant's weekly benefit amount.

(b) (i) A claimant may not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.

(ii) The division shall consider the purposes of this chapter, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine

continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(c) In determining whether work is suitable for an individual, the division shall consider the:

(i) degree of risk involved to the individual's health, safety, and morals;

(ii) individual's physical fitness and prior training;

(iii) individual's prior earnings and experience;

(iv) individual's length of unemployment;

(v) prospects for securing local work in the individual's customary occupation;

(vi) wages for similar work in the locality; and

(vii) distance of the available work from the individual's residence.

(d) Prior earnings shall be considered on the basis of all four quarters used in establishing eligibility and not just the earnings from the most recent employer. The division shall be more prone to find work as suitable the longer the claimant has been unemployed and the less likely the prospects are to secure local work in his customary occupation.

(e) Notwithstanding any other provision of this chapter, no work is suitable, and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) For any week in which the division finds that the claimant's unemployment is due to a stoppage of work that exists because of a strike involving the claimant's grade, class, or group of workers at the factory or establishment at which the claimant is or was last employed.

(a) If the division finds that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the division finds that the strike is caused by the failure or refusal of any employer to conform to any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike may not render the workers ineligible for benefits.

(b) If the division finds that the employer, the employer's agent or representative has conspired, planned, or agreed with any of the employer's workers, their agents or representatives to foment a strike, that strike may not render the workers ineligible for benefits.

(c) A worker may receive benefits if, subsequent to the worker's unemployment because of a strike as defined in this Subsection (4), the worker has obtained employment and has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and has worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage of work due to this strike the wages of the worker

used for the determination of his benefit rights may not include any wages the worker earned from the employer involved in the strike.

(5) (a) For each week a claimant obtains a benefit under this chapter by willfully making a false statement or representation or by knowingly failing to report a material fact, and a penalty of no more than 49 additional weeks as follows:

(i) 13 weeks for the first week the false statement or representation was made or fact withheld to receive a benefit; and

(ii) six weeks for each additional week the false statement or representation was made or fact withheld to receive a benefit.

(b) The additional penalty weeks shall begin on the Sunday of the week the determination finding the claimant in violation of this Subsection (5) is issued.

(c) (i) Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty for fraud, an amount equal to the overpayment.

(ii) The overpayment is the amount of benefits the claimant received by direct reason of fraud.

(iii) Subject to the requirements of Subsection 35A-4-506(7), the civil penalty for fraud amount shall be treated as any other penalty under this chapter.

(iv) The repayment of an overpayment and a civil penalty for fraud shall be collectible by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

(d) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this Subsection (5) remains unpaid.

(e) Determinations under this Subsection (5) shall be appealable in the manner provided by this chapter for appeals from other benefit determinations.

(f) If the fraud determination is based solely on unreported or underreported work or earnings, or both, and the claimant would have been eligible for benefits if the work or earnings, or both, had been correctly reported, the individual does not lose eligibility for that week because of the misreporting but is liable for the overpayment and subject to the penalties in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

(6) For any week with respect to which or a part of which the claimant has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States. If the appropriate agency of the other state or of the United States finally determines that the claimant is not entitled to those unemployment benefits, this disqualification does not apply.

(7) (a) For any week with respect to which the claimant is receiving, has received, or is entitled to receive remuneration in the form of:

(i) wages in lieu of notice, or a dismissal or separation payment; or

(ii) accrued vacation or terminal leave payment.

(b) If the remuneration is less than the benefits that would otherwise be due, the claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection 35A-4-401(3).

(8) (a) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research, or principal administrative

capacity and that begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in that capacity for an educational institution in the second of the academic years or terms.

(b) (i) For any week in which the individual's benefits are based on service in any other capacity for an educational institution, and that week begins during a period between two successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms.

(ii) If compensation is denied to any individual under this Subsection (8) and the individual was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this Subsection (8).

(c) With respect to any services described in Subsection (8)(a) or (b), compensation payable on the basis of those services shall be denied to an individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(d) (i) With respect to services described in Subsection (8)(a) or (b), compensation payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an individual who performed those services in an educational institution while in the employ of an educational service agency in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(iv).

(ii) For purposes of this Subsection (8)(d), "educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing the services described in Subsection (8)(a) or (b) to an educational institution.

(e) With respect to services described in Subsection (8)(a) or (b), compensation payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an individual who performed those services:

(i) to or on behalf of an educational institution in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(v); and

(ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.

(f) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d) and (e) are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to this chapter.

(9) For any week that commences during the period between two successive sport seasons or similar periods if the individual performed any services, substantially all of which consist of participating in sports or athletic events or training or preparing to participate in the first of those seasons or similar periods and there is a reasonable assurance that individual will perform those services in the later of the seasons or similar periods.

(10) (a) For any week in which the benefits are based upon services performed by an alien, unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed, including an alien who is lawfully present in the United States as a result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(A).

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

Amended by Chapter 315, 2013 General Session

35A-4-406. Claims for benefits -- Continuing jurisdiction -- Appeal -- Notice of decision -- Repayment of benefits fraudulently received.

(1) (a) Claims for benefits shall be made and shall be determined by the division or referred to an administrative law judge in accordance with rules adopted by the department.

(b) Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning benefit rights, claims for benefits, and the other matters relating to the administration of this chapter as prescribed by rule of the department.

(c) Each employer shall supply to individuals in his service copies of the printed statements or other materials relating to claims for benefits when and as the department may by rule prescribe. The printed statements and other materials shall be supplied by the division to each employer without cost to the employer.

(2) (a) Jurisdiction over benefits shall be continuous.

(b) Upon its own initiative or upon application of any party affected, the division may on the basis of change in conditions or because of a mistake as to facts, review a decision allowing or disallowing in whole or in part a claim for benefits.

(c) The review shall be conducted in accordance with rules adopted by the department and may result in a new decision that may award, terminate, continue, increase, or decrease benefits, or may result in a referral of the claim to an appeal tribunal.

(d) Notice of any redetermination shall be promptly given to the party applying for redetermination and to other parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination.

(e) The new order shall be subject to review and appeal as provided in this section.

(f) A review may not be made after one year from the date of the original determination, except in cases of fraud or claimant fault as provided in Subsection (4).

(3) (a) The claimant or any other party entitled to notice of a determination as provided by department rule may file an appeal from the determination with the Division of Adjudication within 10 days after the date of mailing of the notice of determination or redetermination to the party's last-known address or, if the notice is not mailed, within 10 days after the date of delivery of the notice.

(b) Unless the appeal or referral is withdrawn with permission of the administrative law judge, after affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm, modify, or reverse the determination or redetermination.

(c) The administrative law judge shall first give notice of the pendency of an appeal to the division, which may then be a party to the proceedings. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to the proper determination of the appeal.

(d) The parties shall be promptly notified of the administrative law judge's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.

(e) The decision is considered to be final unless, within 30 days after the date of mailing of notice and a copy of the decision to the party's last-known address, or in the absence of mailed notice, within 30 days after the delivery of the notice, further appeal is initiated in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings.

(4) (a) Any person who, by reason of his fraud, has received any sum as benefits under this chapter to which he was not entitled shall repay the sum to the division for the fund.

(b) If any person, by reason of his own fault, has received any sum as benefits under this chapter to which under a redetermination or decision pursuant to this section he has been found not entitled, he shall repay the sum, or shall, in the discretion of the division, have the sum deducted from any future benefits payable to him, or both.

(c) In any case in which under this subsection a claimant is liable to repay to the division any sum for the fund, the sum shall be collectible in the same manner as provided for contributions due under this chapter.

(5) (a) If any person has received any sum as benefits under this chapter to which under a redetermination or decision he was not entitled, and it has been found that he was without fault in the matter, he is not liable to repay the sum but shall be liable to have the sum deducted from any future benefits payable to him.

(b) The division may waive recovery of the overpayment if it is shown to the satisfaction of the division that the claimant has the inability to meet more than the basic needs of survival for an indefinite period lasting at least several months.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-407. Voluntary income tax withholding.

(1) The department shall advise an individual filing a new claim for benefits at the time of filing the claim that:

(a) unemployment benefits may be subject to federal, state, and local income tax;

(b) there are requirements for estimating tax payments;

(c) the individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified by the Internal Revenue Code;

(d) the individual may elect to have state income tax deducted and withheld from the individual's payment of benefits at the rate of 5%; and

(e) the individual may change a previously elected withholding status.

(2) Amounts deducted and withheld from benefits for income taxes under Subsection (1) shall remain in the unemployment trust fund until transferred to the federal or state taxing authority as a payment of income tax.

(3) (a) The department shall follow all procedures specified by the United States Department of Labor, the Internal Revenue Service, and the State Tax Commission pertaining to deducting, withholding, and submitting amounts deducted and withheld for income taxes.

(b) Amounts deducted and withheld for income taxes under this section shall be deducted and withheld only after amounts are deducted and withheld for:

(i) overpayment of unemployment compensation;

(ii) child support obligations; or

(iii) any other amount required to be deducted and withheld under this chapter.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-501. Unemployment Compensation Fund -- Administration -- Contents -- Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances under Social Security Act.

(1) (a) There is established the Unemployment Compensation Fund, separate and apart from all public money or funds of this state, that shall be administered by the department exclusively for the purposes of this chapter.

(b) This fund shall consist of the following money, all of which shall be mingled and undivided:

(i) all contributions collected under this chapter, less refunds of contributions made from the clearing account under Subsection 35A-4-306(5);

(ii) interest earned upon any money in the fund;

(iii) any property or securities acquired through the use of money belonging to the fund;

(iv) all earnings of the property or securities;

(v) all money credited to this state's account in the unemployment trust fund under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and

(vi) all other money received for the fund from any other source.

(2) (a) The state treasurer shall:

(i) be the treasurer and custodian of the fund;

(ii) administer the fund in accordance with the directions of the division; and

(iii) pay all warrants drawn upon it by the division or its duly authorized agent in accordance with rules made by the department.

(b) The division shall maintain within the fund three separate accounts:

(i) a clearing account;

(ii) an unemployment trust fund account; and

(iii) a benefit account.

(c) All money payable to the fund, upon receipt by the division, shall be immediately deposited in the clearing account.

(d) (i) All money in the clearing account after clearance shall, except as otherwise provided in this section, be deposited immediately with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(ii) Refunds of contributions payable under Subsections 35A-4-205(1)(a) and 35A-4-306(5) may be paid from the clearing account or the benefit account.

(e) The benefit account shall consist of all money requisitioned from this state's account in the unemployment trust fund in the United States treasury.

(f) Money in the clearing and benefit accounts may be deposited in any depository bank in which general funds of this state may be deposited, but no public deposit insurance charge or premium may be paid out of the fund.

(g) (i) Money in the clearing and benefit accounts may not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank.

(ii) The money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state.

(iii) Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state.

(h) (i) The state treasurer is liable on the state treasurer's official bond for the faithful performance of the state treasurer's duties in connection with the unemployment compensation fund provided for under this chapter.

(ii) The liability on the official bond shall be effective immediately upon the enactment of this provision, and that liability shall exist in addition to the liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.

(iii) All sums recovered for losses sustained by the fund shall be deposited in the fund.

(3) (a) (i) Money requisitioned from the state's account in the unemployment trust fund shall, except as set forth in this section, be used exclusively for the payment of benefits and for refunds of contributions under Subsections 35A-4-205(1)(a) and 35A-4-306(5).

(ii) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts standing to this state's account in the fund, as it considers necessary for the payment of those benefits and refunds for a

reasonable future period.

(iii) (A) Upon receipt the treasurer shall deposit the money in the benefit account and shall pay benefits and refunds from the account by means of warrants issued by the division in accordance with rules prescribed by the department.

(B) Expenditures of these money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(b) Money in the state's account in the unemployment trust fund that were collected under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to the state under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended may be requisitioned from the state's account and used in the payment of expenses incurred by the department for the administration of the state's unemployment law and public employment offices, if the expenses are incurred and the withdrawals are made only after and under a specific appropriation of the Legislature that specifies:

(i) the purposes and amounts;

(ii) that the money may not be obligated after the two-year period that began on the date of the enactment of the appropriation law; and

(iii) that the total amount which may be used during a fiscal year may not exceed the amount by which the aggregate of the amounts credited to this state's account under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state for administration during the same 35 fiscal years.

(A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall be charged against equivalent amounts that were first credited and that have not previously been so charged. An amount used during any fiscal year may not be charged against any amount credited during a fiscal year earlier than the 34th preceding fiscal year.

(B) Except as appropriated and used for administrative expenses, as provided in this section, money transferred to this state under Section 903 of the Social Security Act as amended, may be used only for the payment of benefits.

(C) Any money used for the payment of benefits may be restored for appropriation and use for administrative expenses, upon request of the governor, under Section 903(c) of the Social Security Act.

(D) The division shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited.

(E) Money deposited shall, until expended, remain a part of the unemployment fund and, if not expended, shall be returned promptly to the account of this state in the unemployment trust fund.

(F) The money available by reason of this legislative appropriation may not be expended or available for expenditure in any manner that would permit their substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(c) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and

may be utilized for the payment of, benefits and refunds during succeeding periods, or in the discretion of the division, shall be redeposited with the secretary of the treasury of the United States of America to the credit of the state's account in the unemployment trust fund, as provided in Subsection (2).

(4) (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to the unemployment trust fund, shall be operative only so long as the unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for the state a separate book account of all money deposited in the fund by the state for benefit purposes, together with the state's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals.

(b) (i) When the unemployment trust fund ceases to exist, or the separate book account is no longer maintained, all money belonging to the unemployment compensation fund of the state shall be administered by the division as a trust fund for the purpose of paying benefits under this chapter, and the division shall have authority to hold, invest, transfer, sell, deposit, and release the money, and any properties, securities, or earnings acquired as an incident to the administration.

(ii) The money shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America, of the state, or of any county, city, town, or school district of the state, at current market prices for the bonds.

(iii) The investment shall be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

Amended by Chapter 297, 2011 General Session

35A-4-502. Administration of Employment Security Act.

(1) (a) The department shall administer this chapter through the division.

(b) The department may make, amend, or rescind any rules and special orders necessary for the administration of this chapter.

(c) The division may:

(i) employ persons;

(ii) make expenditures;

(iii) require reports;

(iv) make investigations;

(v) make audits of any or all funds provided for under this chapter when necessary; and

(vi) take any other action it considers necessary or suitable to that end.

(d) No later than the first day of October of each year, the department shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make any recommendations for amendments to this chapter as the department considers proper.

(e) (i) The report required under Subsection (1)(d) shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the division in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for

the longest possible period.

(ii) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the Legislature and make appropriate recommendations.

(2) (a) The department may make, amend, or rescind rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The director of the division or the director's designee may adopt, amend, or rescind special orders after appropriate notice and opportunity to be heard. Special orders become effective 10 days after notification or mailing to the last-known address of the individuals or concerns affected thereby.

(3) The director of the division or the director's designee shall cause to be printed for distribution to the public:

(a) the text of this chapter;

(b) the department's rules pertaining to this chapter;

(c) the department's annual reports to the governor required by Subsection (1)(e); and

(d) any other material the director of the division or the director's designee considers relevant and suitable and shall furnish them to any person upon application.

(4) (a) The division may delegate to any person so appointed the power and authority it considers reasonable and proper for the effective administration of this chapter and may bond any person handling money or signing checks under this authority.

(b) The department may, when permissible under federal and state law, make arrangements to voluntarily elect coverage under the United States Civil Service Retirement System or a comparable private retirement plan with respect to past as well as future services of individuals employed under this chapter who:

(i) were hired prior to October 1, 1980; and

(ii) have been retained by the department without significant interruption in the employees' services for the department.

(c) An employee of the department who no longer may participate in a federal or other retirement system as a result of a change in status or appropriation under this chapter may purchase credit with the employee's assets from the federal or other retirement system in which the employee may no longer participate in a retirement system created under:

(i) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act for a purchase made under this Subsection (4)(c) by an employee eligible for service credit under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or

(ii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act, for a purchase made under this Subsection (4)(c) by an employee eligible for service credit under Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

(5) There is created an Employment Advisory Council composed of the members listed in Subsections (5)(a) and (b).

(a) The executive director shall appoint:

(i) not less than five employer representatives chosen from individuals recommended by employers, employer associations, or employer groups;

(ii) not less than five employee representatives chosen from individuals recommended by employees, employee associations, or employee groups; and

(iii) five public representatives chosen at large.

(b) The executive director or the executive director's designee shall serve as a nonvoting member of the council.

(c) The employee representatives shall include both union and nonunion employees who fairly represent the percentage in the labor force of the state.

(d) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(e) (i) Except as required by Subsection (5)(e)(ii), as terms of current council members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (5)(e)(i), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(g) The executive director shall terminate the term of any council member who ceases to be representative as designated by the council member's original appointment.

(h) The council shall advise the department and the Legislature in formulating policies and discussing problems related to the administration of this chapter including:

(i) reducing and preventing unemployment;

(ii) encouraging the adoption of practical methods of vocational training, retraining, and vocational guidance;

(iii) monitoring the implementation of the Wagner-Peyser Act;

(iv) promoting the creation and development of job opportunities and the reemployment of unemployed workers throughout the state in every possible way; and

(v) appraising the industrial potential of the state.

(i) The council shall assure impartiality and freedom from political influence in the solution of the problems listed in Subsection (5)(h).

(j) The executive director or the executive director's designee shall serve as chair of the council and call the necessary meetings.

(k) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(l) The department shall provide staff support to the council.

(6) In the discharge of the duties imposed by this chapter, the division director or the director's designee as designated by department rule, may in connection with a disputed matter or the administration of this chapter:

(a) administer oaths and affirmations;

(b) take depositions;

(c) certify to official acts; and

(d) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records necessary as evidence.

(7) (a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the director of the division or the director's designee shall have jurisdiction to issue to that person an order requiring the person to appear before the director or the director's designee to produce evidence, if so ordered, or give testimony regarding the matter under investigation or in question. Any failure to obey that order of the court may be punished by the court as contempt.

(b) Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in that person's power to do so, in obedience to a subpoena of the director or the director's designee shall be punished as provided in Subsection 35A-1-301(1)(b). Each day the violation continues is a separate offense.

(c) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

(8) (a) In the administration of this chapter, the division shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take action, through the adoption of appropriate rules by the department and administrative methods and standards, as necessary to secure to this state and its citizens all advantages available under the provisions of:

(i) the Social Security Act that relate to unemployment compensation;

(ii) the Federal Unemployment Tax Act; and

(iii) the Federal-State Extended Unemployment Compensation Act of 1970.

(b) In the administration of Section 35A-4-402, which is enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304, the division shall take any action necessary to ensure that the section is interpreted and applied to meet the requirements of the federal act, as interpreted by the United States Department of Labor and to secure to this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter that are reimbursable under the federal act.

Amended by Chapter 439, 2011 General Session

35A-4-503. Destruction or disposal of records or reports by division -- Procedure.

The division may destroy or dispose of reports or records as have been properly recorded or summarized in the payment records of the division, or that are deemed no longer necessary in the proper administration of this chapter in accordance with the requirements of the state records committee pursuant to Section 63G-2-502.

Amended by Chapter 382, 2008 General Session

35A-4-506. Special Administrative Expense Account.

(1) There is created a restricted account within the General Fund known as the "Special Administrative Expense Account."

(2) (a) Subject to Subsection (7), interest and penalties collected under this chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of the restricted account at the end of each calendar month.

(b) A contribution to the restricted account and any other money received for that purpose shall be paid into the restricted account.

(c) The money in the restricted account may not be expended in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(3) Nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures, necessary and proper under this chapter, for which federal funds have been duly requested but not yet received subject to the charging of those expenditures against the funds when received.

(4) Subject to Subsections (6) and (7), money in the restricted account shall be deposited, administered, and dispersed in accordance with the directions of the Legislature.

(5) Subject to Subsection (6), money in the restricted account is made available to replace, within a reasonable time, any money received by this state under Section 302 of the Social Security Act, 42 U.S.C. Sec. 502, as amended, that because of any action of contingency has been lost or has been expended for purposes other than or in amounts in excess of those necessary for the proper administration of this chapter.

(6) If money in the restricted account is used for a purpose unrelated to the administration of the unemployment compensation program as described in Subsection 303(a)(8) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended, the division shall develop and follow a cost allocation plan in compliance with United States Department of Labor regulations, including the cost principles described in 29 C.F.R. 97.22(b) and 2 C.F.R. Part 225.

(7) Beginning October 1, 2013, 15% of a civil penalty for fraud collected under Subsection 35A-4-405(5)(c)(i) shall be deposited into the Unemployment Compensation Fund, described in Section 35A-4-501, in compliance with Subsection 303(a)(11) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended.

(8) Money in the restricted account shall be available to the division for expenditure in accordance with this section.

(9) The state treasurer shall pay all warrants drawn upon it by the division or its duly authorized agent in accordance with rules made by the department.

(10) (a) The state treasurer is liable on the state treasurer's official bond for the faithful performance of the treasurer's duties in connection with the Special Administrative Expense Account described in this chapter.

(b) Liability on the official bond exists in addition to any liability upon any separate bond that exists on the effective date of this provision or that may be given in

the future.

(c) Any money recovered on any surety bond losses sustained by the Special Administrative Expense Account shall be deposited in the restricted account or in the General Fund if directed by the Legislature.

Amended by Chapter 315, 2013 General Session

35A-4-507. Authority to obtain money from state's account in federal unemployment trust fund -- Use and deposit.

(1) Notwithstanding the provisions of Sections 35A-4-501 and 35A-4-506, the department may requisition and receive from the state's account in the unemployment trust fund in the treasury of the United States the money standing to the state's credit as may, consistent with conditions for approval of this chapter under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., be used for expenses of administering this chapter and to expend the money for that purpose.

(2) Money requisitioned under Subsection (1) shall be deposited in the Special Administrative Expense Account created by Section 35A-4-506.

Amended by Chapter 342, 2011 General Session

35A-4-508. Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.

(1) (a) A review of a decision or determination involving contribution liability or applications for refund of contributions shall be made by the division in accordance with the provisions of this chapter.

(b) The division in conducting the review may in its discretion:

(i) refer the matter to an administrative law judge;

(ii) decide the application for review on the basis of any facts and information as may be obtained; or

(iii) hear argument or hold an informal hearing to secure further facts.

(c) After the review, notice of the decision shall be given to the employing unit.

(d) The decision made pursuant to the review is the final decision of the division unless, within 10 days after the date of notification or mailing of the decision, a further appeal is initiated under the provisions of this section.

(2) (a) Within 10 days after the mailing or personal delivery of a notice of a determination or decision rendered following a review under Subsection (1), an employing unit may appeal to the Division of Adjudication by filing a notice of appeal.

(b) The administrative law judge shall give notice of the pendency of the appeal to the division and any parties entitled to notice as provided by department rule. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to a proper determination of the appeal.

(c) After affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm,

modify, or reverse the determination of the division.

(d) The parties and the division shall be promptly notified of the administrative law judge's decision and furnished a copy of the decision and findings.

(e) The decision of the administrative law judge is considered to be a final order of the department unless within 30 days after the date the decision of the administrative law judge is issued further appeal is initiated under this section and Chapter 1, Part 3, Adjudicative Proceedings.

(3) (a) The director of the Division of Adjudication shall assign an impartial, salaried administrative law judge selected in accordance with Subsection 35A-4-502(4)(a) to hear and decide referrals or appeals relating to claims for benefits or to make decisions affecting employing units under this chapter.

(b) All records on appeals shall be maintained in the offices of the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals on review.

(4) The Workforce Appeals Board may review and decide an appeal from a decision of an administrative law judge issued under this chapter.

(5) (a) The manner in which disputed matters are presented, the reports required from the claimant and employing units, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the department for determining the rights of the parties, whether or not the rules conform to common-law or statutory rules of evidence and other technical rules of procedure.

(b) When the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding, the same time and place for considering each matter may be fixed, hearings jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, if in the judgment of the administrative law judge having jurisdiction of the proceedings, the consolidation would not be prejudicial to any party.

(6) (a) Except for reconsideration of any determination under Subsection 35A-4-406(2), any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination that has become final, or in a decision on appeal under this section that has become final, is conclusive for all the purposes of this chapter as between the division, the claimant, and all employing units that had notice of the determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this section, any determination, redetermination, or decision as to rights to benefits is conclusive for all the purposes of this chapter and is not subject to collateral attack by any employing unit, irrespective of notice.

(b) Any findings of fact or law, judgment, conclusion, or final order made by an unemployment insurance hearing officer, administrative law judge, or any person with the authority to make findings of fact or law in any action or proceeding before the unemployment insurance appeals tribunal, is not conclusive or binding in any separate or subsequent action or proceeding, between an individual and the individual's present or prior employer, brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(7) (a) Any decision in the absence of an appeal as provided becomes final

upon issuance and judicial review may be permitted only after any party claiming to be aggrieved has exhausted the party's remedies before the department as provided by this chapter.

(b) The division is a party to any judicial action involving any decisions and shall be represented in the judicial action by any qualified attorney employed by the department and designated by it for that purpose or at the division's request by the attorney general.

(8) (a) Within 30 days after the decision of the Workforce Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the Workforce Appeals Board for the review of its decision, in which action any other party to the proceeding before the Workforce Appeals Board shall be made a defendant.

(b) In that action a petition, that shall state the grounds upon which a review is sought, shall be served upon the Workforce Appeals Board or upon that person the Workforce Appeals Board designates. This service is considered completed service on all parties but there shall be left with the party served as many copies of the petition as there are defendants and the Workforce Appeals Board shall mail one copy to each defendant.

(c) With its answer, the Workforce Appeals Board shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with its findings of fact and decision, in accordance with the requirements of the Utah Rules of Appellate Procedure.

(d) The Workforce Appeals Board may certify to the court questions of law involved in any decision by the board.

(e) In any judicial proceeding under this section, the findings of the Workforce Appeals Board as to the facts, if supported by evidence, are conclusive and the jurisdiction of the court is confined to questions of law.

(f) It is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the division, an administrative law judge, Workforce Appeals Board and no bond is required for entering the appeal.

(g) Upon final determination of the judicial proceeding, the division shall enter an order in accordance with the determination. In no event may a petition for judicial review act as a supersedeas.

(9) The procedure provided for hearings and decisions with respect to any decision or determination of the division affecting claimants or employing units under this chapter is the sole and exclusive procedure notwithstanding any other provision of this title.

Amended by Chapter 13, 1998 General Session